Démocratie locale et régionale

Local authority competences in Europe

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Situation in 2007

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Summary

The purpose of this study is to offer a new comparative approach to local authority powers and functions in Council of Europe member states. This approach is based on an analysis of actual situations in a sample of states, so as to come up with principles and a comparative grid. It focuses on the first tier of government. The countries were chosen as representing the broad range of experience across Europe (Germany, Spain, France, Hungary, Italy, the Netherlands, Portugal, England in the United Kingdom, Sweden).

The report is divided into two parts:

I. Definitions and the institutional framework for municipal powers and functions

II. Comparing systems of local powers and functions.

The appendix contains summaries of the features taken into account for each of the sample countries.

I. Definitions and the institutional framework for municipal powers and functions

A) The concepts of power and function

A distinction must be drawn in legal terms between function (*compétence*) and power (*pouvoir*). Powers (*compétence)* in the strict sense of authority exist only through the combination of a function (*compétence matérielle*) and the powers or duties (*pouvoirs*) which that authority can apply to them. Functions (*compétences*) cannot be analysed without powers or duties (*pouvoirs*), the combination of which determines the local authority's degree of freedom. Local authority powers can never be analysed on their own, but must always be considered in the context of relations between local authorities and central government or regional authorities (in federal states or autonomous regions): in practice, the distribution of functions is often a sharing out of powers which may concern the matters addressed or the powers exercised, or both at once.

Powers (*compétence*) may thus be fully defined only with reference to the subject matter to which they apply (also termed "function"), the powers intended to exercise it (which may be a faculty – power – or an obligation – duty) and the resources needed to implement them, as well as the holder of these powers. Local self-government is a freedom, and the degree of freedom

with which this function is exercised depends first and foremost on powers and resources. The extent of this freedom may of course vary, depending on the fields, periods and systems concerned, but where this freedom does not exist, there is no local self-government. If a local authority has neither power to act nor free use of resources, it is merely an agent of the higher authority in the exercise of the functions assigned to it. Truth to tell, it is no longer really the holder of a power, but a performer of tasks. It is for the law to set limits to this freedom, since local authorities are not isolated units and autonomy is always a relative concept, but without such freedom local self-government has no longer any political substance and ceases to exist.

B) Features common to the municipality as an institution in European countries

It is a striking fact that, notwithstanding the great variety of forms of the municipal institution, there are several common features crucial to our analysis of the system of powers, irrespective of the nature of the state (unitary, federal or comprising autonomous regions): 1) the principle of local self-government is recognised by the constitution or the law; 2) the general nature of local powers is recognised; 3) functions are laid down in law; 4) local authorities have a regulatory power for the exercise of their functions; 5) their power to levy certain taxes is always recognised; 6) there is always legal supervision; 7) there are always procedures safeguarding local self-government.

C) Distinguishing criteria

These differentiate between countries' local government systems, where this is relevant to a study of powers and functions. Four criteria will be examined: 1) functional fragmentation or integration; 2) the unity or duality of local government organisation, depending on urban organisation; 3) the implementation or absence of territorial reform; 4) local public expenditure as a percentage of GDP.

II. Comparing systems of local powers and functions

The purpose of comparing systems of local powers and functions is to assess the extent of local authorities' freedom of action in the light of the relations they necessarily maintain with state authorities or regional authorities (federate entities and autonomous regions). Several comparative tables serve to summarise the author's comments.

The first table summarises the constraints imposed on and powers exercised by local authorities (or their groupings). Of the nine countries studied, four have experienced territorial reform (Germany, the Netherlands, the United Kingdom and Sweden) and four are countries with large or very large local authorities (the Netherlands, Portugal, the United Kingdom and Sweden). Local authorities in all countries exercise a specific, subordinate regulatory power for the purpose of exercising their functions. In all countries the state authorities, or regional authorities in federal states and countries with autonomous regions, have field departments, which are nevertheless not always placed under a single authority in charge of most of them. Local authorities are normally free to organise their administration and choose their method for managing the public services within their remit which must be provided to the population, but there are exceptions. The situations in the various countries diverge most markedly with regard to fiscal power, but against the background of a common trend: the erosion of local authorities' fiscal power, the only exceptions being Italy and Sweden. However, Spain, France, Italy and Sweden are distinguished by the fact that more than 30% of municipalities' budgetary resources derive from own local taxation. Lastly, contractual relations between public authorities with a view to organising co-operation or co-ordinating their activities are becoming rather more widespread in European countries.

This table shows that in all the countries studied and doubtless also in all European countries, certain functions are performed by the municipalities or their groupings, sometimes together with their subdivisions (as with the *freguesias* in Portugal): the main town-planning functions (planning, land use permits, spatial planning operations), the award of social welfare benefits and the management of social institutions for particular sections of the population (especially the elderly), roads and public transport (depending on the size of the authority), the construction and maintenance of school buildings, now supplemented in all countries by educational support activities, and economic development, which is reflected in various activities even in countries where it

is not listed among municipalities' statutory functions. These functions may be regarded as the common core of municipal competence.

This core does not include certain functions that are often considered to be part of it: water supply, which is often (but not necessarily) associated with drainage and sewage, and low-cost housing. The former is not provided by local authorities in the United Kingdom, and municipal responsibility for low-cost housing has been substantially whittled down in several countries with reforms designed to introduce private management of low-cost housing and privatise housing stock.

However, the core functions just identified vary in scope from one country to another. In the Netherlands, for example, municipalities' responsibility for social welfare extends to labour market integration policy (management of benefits and implementation of the labour market reintegration programme), while in France this is the *départements*' responsibility; furthermore, not all countries have introduced a minimum income allowance. Responsibility for the construction and maintenance of school buildings is confined to primary schools in most countries, but extends to secondary schools in the Netherlands, Sweden and the United Kingdom in cases where local authorities have retained responsibility for it, and in Germany in towns and cities with county or *Land* status: unsurprisingly, these are countries featuring large municipalities.

Over and above this core and its country-based differences in content, the countries are differentiated according to the predominance of either economic or social functions, but no homogeneous groups emerge. We might simply refer to "*competence profiles*", i.e. sets of functions distinguished by their subject matter, but which can be broader or less so, or in other words comprise a greater or smaller number of matters on which local authorities have the power to act by the legal and material means assigned to them. These competence profiles can be more or less functions of a country's local authorities or be superimposed on each other in the actual functions of a country's local authorities, which is increasingly often the case.

It is proposed to distinguish between four competence profiles: social, economic, town planning/environment, and police/public order. Their content is summarised in a table irrespective of the capacity in which and the degree of freedom with which the functions are exercised. The functions of municipalities in each country can be analysed by combining these

competence profiles; the combination may evolve over time, as may the actual content of each competence profile for the municipalities of a given country.

Lastly, the comparative analysis of the degree of local self-government – or devolution – is based on a comparison of functions, powers (resources) and constraints, especially the forms of supervision exercised by higher authorities. It must be conducted sector by sector if it is to be more effective than approaches which are too institutional and too comprehensive. It is apparent from the sectoral comparative analysis that the degree of devolution varies considerably from one sector to another in a given country and that some functions are regarded as belonging to local authorities in some countries while they are regarded as the preserve of national authorities in others.

Introduction

The purpose of this report is to offer a new comparative approach to local authority powers and functions in Council of Europe states.

A vast amount of information is available on this subject, but the lack of a sufficiently accurate methodology enabling data to be collected and presented in ways which make comparisons meaningful renders the use of this information problematic. The various theories and classifications suggested on the basis of public law, economic science or political science lack an adequate empirical basis, making them weak. Most of them are geared to standard-setting and do not enable account to be taken of either the powers and functions actually exercised or the degree of independence or freedom with which they are exercised, since situations and organisational methods in each country tend to have evolved over time, rather than resulting from the implementation of programmes guided by abstract rational thinking.

Hence the proposal to give more thought to this subject, this time based on an analysis of actual situations in a number of Council of Europe member states, so as to come up with principles and a comparative grid applicable, after verification, correction and validation, to other states. This would make it easier for national authorities to appraise their own country's position in relation to that of other Council of Europe member states, and particularly that of their neighbours, which are not always better known than countries further away.

Given the diversity of national systems and the fact that municipalities nevertheless exist in all countries, as well as the importance of the municipality as the basic unit of local self-government, the research focused on the municipal tier. The other tiers will be taken into account only in relation to municipal powers and functions.

This choice raises an initial difficulty in relation to the United Kingdom, where the terms "municipality" and "municipal" are never used to describe British local government institutions. The first-tier local authorities – districts and unitary councils – were admittedly set up on the basis of functional criteria and the United Kingdom traditionally features large local authorities. But the functions they exercise are very comparable to those exercised by municipalities in other European countries, and other countries that have opted for large units nonetheless continue to include municipalities in them

(particularly the Nordic countries). Lastly, a few other countries refer to the concept of municipality but do not grant them universal competence or provide for them to be covered by a general competence clause. For all these reasons, I believe that first-tier local authorities in the United Kingdom can be equated with municipalities, regardless of other differences between them.

A sample of countries was therefore chosen, on the basis of knowledge already acquired of their local government models, so as to guarantee that a fairly varied and contrasting range of national experience would be taken into consideration, preventing the conclusions from being skewed by reference to a number of cases too small and in fact too unusual compared to the rest of Europe. The proposed list comprised Germany, Spain, France, Hungary, Italy, the Netherlands, Poland, Portugal, England in the United Kingdom and Sweden.

Focusing solely on England in the United Kingdom does not in any sense mean underestimating the importance of devolution in Scotland, Wales and Northern Ireland. It simply means that the purpose here is to compare national situations which reflect diversity in Europe in terms of the powers and functions of first-tier local authorities. Taking account of the new features of these three regions of the United Kingdom in the matter would distance us from that objective because the system of powers and functions in fact remains close to that in force in England.

A questionnaire was drawn up for the purposes of this research, and replies were requested from the national authorities of the selected states. Study visits were also planned to three countries, in order to obtain fuller and more up-to-date information. The three countries concerned, Hungary, the Netherlands and Sweden, were chosen for the particularly interesting nature of their local government system and for not being so widely covered in international literature.

Replies came back in 2004. The study visits were made in July 2004 (Sweden), at the end of January 2005 (Hungary) and between January and March 2005 (the Netherlands). These visits were highly productive, and our thanks go to the national authorities which organised them.

No replies were received from three of the countries included in the sample: Germany, France and Poland. However, no reply was needed from France, and

the author has access to information about Germany which very largely compensates for the lack of an answer from them.

On this basis, the report is divided into two parts. The first defines the legal concepts and describes the features of municipal organisation in the European states concerned. The second part, which is essentially methodological, compares the systems of local authority powers and functions. The initial purpose of the project was to build a model of the national situations studied, in order to classify the countries in categories based on a set of significant characteristics. However, it does not seem possible to achieve this objective: the idiosyncrasy of national systems admittedly does not preclude classifying information on the basis of particular criteria, but the converging trends that have developed over the last few decades have somewhat blurred the distinctive features inherited from the past, and entrenching them with the aid of models and archetypes would give a distorted image of reality. What can be proposed, on the other hand, is a grid for analysing and assessing systems of local powers and functions, which leaves room for changes in the various countries' systems of local government.

To make the conclusions of the report more easily accessible to the reader, the country analyses on which they are based are set out in an appendix. This is not, however, a series of purely documentary country fact sheets, but rather a series of analyses designed to highlight the typical features of municipal organisation and municipal powers and functions in each of the countries in the sample studied. They are therefore intended to clarify the report itself – a consolidated report which may not always mention the characteristics of a given country although it takes them into account – and enable the reader to take a critical approach to the report.

I. Definitions and the institutional framework within which municipal powers and functions are exercised

The first step must be to agree exactly what the concepts of power and function and their French equivalent "*compétence(s)*" encompass, for the words have several possible meanings, including in the legal sphere (A). Part A also looks at the question of who it is that holds powers or functions. The next stage is to try to find a set of common features of municipalities in European countries (B), and then the criteria for establishing the fundamental differences between these countries' systems of municipal organisation (C). This preliminary work is vital to a comparative study of local powers and functions, for these depend on the legal and political status and the size and capacities of local authorities and, more generally, on their place within the state.

A) The concepts of power, function and "compétence"

The ambiguity of the French noun "*compétence*" (and its many European equivalents) is evident from the manner in which the word is used. It is frequently used, for instance, to designate a power (when reference is made to legislative power, for example), but also to designate the subject matter to which that power applies (as in Article 72 (3) of the French Constitution in the revised version of 28 March 2003, which states that local and regional authorities "shall have regulatory power to exercise their functions"), or to designate authority to act (as in Article 72 (1): submission through a petition to the council of a local or regional authority of a "matter within its powers"). In the United Kingdom, the legislation always refers to "function", "power" and "duty", and indicates the subject matter to which this power applies (Local Government Act 2000); it does not feature the widely-used terms "responsibility" and "competence". "Function" always refers to a given matter, while "duty" indicates an obligation and "power" a faculty; "function" is consequently a general concept and denotes a matter that can be dealt with either by a "power" or by a "duty". It is therefore the term "power" that is somewhat ambiguous, depending on the context in which it is used; the plural "powers" is similar in meaning to the French "*compétences*" and denotes a power combined with its subject matter.

The concepts are still harder to understand because international English has imported words, often of American origin, which do not have a precise meaning in English, particularly when it comes to describing British local

government institutions. Examples include *"competence" and "competencies"*, which tend to denote capacities; *"mandatory task"*, which is used to mean mandatory functions, termed *"duty"* in English; and *"responsibility"*, often used in the international literature to denote functions. In this report I shall try to keep to the British terminology.

Other countries use clearer terminology. Germany's Basic Law, for instance, distinguishes between power (*Befugnis*), function (*Zuständigkeit*) and the subject matter of the function (*Gegenstand*) in those articles which relate to legislation (Articles 70 to 73). This clarification, however, is misleading, for, where matters of direct interest to us are concerned, local authorities may only deal with "local authority business" (*Angelegenheiten der örtlichen Gemeinschaft*) (Art 28.2) and the "tasks" (*Aufgaben*) of independent local government (under the constitutions or legislation of the *Länder*).

The same terminology crops up in the 1997 Polish Constitution, which refers to local authorities' "tasks" (*zadania*) (Arts 163 and 166, inter alia); the word "competence" (*kompetenzja*) does, however, appear, when it is stated that "conflicts of competence" (*spory kompetencyjne*) between independent local government bodies and government authorities are to be decided by the administrative courts (Art 166.3). Spanish legislation, in contrast, reserves the term "*competencias*" for matters within the responsibility of the local authority (Law No. 7/1985, Arts 25 and 26), and makes a clear distinction between such functions and "prerogatives" (*potestades*) (Art 4). The new text of Part V of the Italian Constitution in the revised version of 18 October 2001 uses the terms "functions" and "powers", whereas the previous text had referred only to "functions"; where the old text had referred to a legislative function, the new one uses the term "legislative power" (Art 117). Where local authorities are concerned, the new Article 118 makes a definite but obscure distinction between "functions" and "powers": "*I Comuni, le Province e le Città metropolitane sono titolari di funzioni amministrative proprie e di quelle conferite con legge statale o regionale, secondo le rispettive competenze"* (para. 2). This wording suggests that "functions" are the content or subject matter of powers.

Lastly, in the French version of the European Charter of Local Self-Government, the word "*compétence*" takes on two meanings: one is that of function, or functional area of responsibility (Art 4.1: "*les compétences de base des collectivités locales* …"), while the other is that of capacity (Art 4.2: "*toute question qui n'est pas exclue de leur compétence*"). It is even used to mean both

at once, given that the English version refers in Article 4.1 to "the basic powers and responsibilities of local authorities…". The concept of "*responsabilité publique*" (Art 4.3) also appears to cover powers and their object. But where the English version uses "powers" in Article 4.4 – "powers given to local authorities shall normally be full and exclusive", the French version uses the word "*compétences*". In Article 4.5 the English version also uses the word "powers" – "where powers are delegated to them by a central or regional authority …" – but here the French version refers to "*délégation de pouvoirs*". The same ambiguity is apparent in Article 9: where the French version refers to "compétences" in Article 9.1 and 9.2, the English version refers to "powers" and "responsibilities" respectively; in Article 9.4, "*compétence*" in the French version is rendered as "tasks" in the English version. These wordings suggest that the word "power" in the English version is not simply used in the sense of the French word "*pouvoir*", but, in Article 4.4 and 4.5, in a broader sense, as the French word "*compétence*" sometimes is.

What conclusions may be drawn from this brief overview of the terms used in different countries and in the Charter? Two things are clear: firstly, it is preferable to distinguish between the French words "*pouvoir*" (power) and "*compétence*" (powers or function), as the former implies authority to act as derived from the constitution and legislation, while the latter refers to the subject matter to which this authority is applied (in which case it can also be termed "function" in English) and/or the framework for action in which this authority is exercised (in which case it can also be termed "competence" in English, as in Art 4.2 of the Charter). Secondly, the English word "functions" ("*compétences*") is used to designate things or matters subject to this power to act, while the word "power" ("*compétence*") is used in the singular or plural to give a general idea of its legal scope, to reflect the limits within which the authority holding this power is entitled to act.

"Powers" (as in Art 4.4 and 4.5 of the Charter) and "functions", respectively reflecting the two meanings of the French word "*compétence(s)*", will serve here as the basis for our comparison. They express the link between different elements of local self-government. Power (*compétence*) is the legal authority (authorisation) enabling a person recognised by public law to act with a specific purpose or on a specific subject (function) using the legal and other means derived from the law.

From the standpoint of public activity, these terminology problems are quite easily explained. A power is of importance only in terms of the subject matter

to which it applies, and for local authorities, which by definition do not have "competence to decide questions of competence", being assigned powers presupposes simultaneously being assigned functions. Conversely, assigning functions would be pointless without defining the legal powers and indeed the financial resources that would enable local authorities to take action in the matters concerned.

We may conclude that:

1) a distinction must be drawn in legal terms between function (*compétence*) and power;
2) powers (*compétence*) in the strict sense of authority exist only through the combination of a function (*compétence matérielle*) and the powers or duties (*pouvoirs*) which that authority can apply to it;
3) functions (*compétences*) cannot be analysed without powers or duties (*pouvoirs*), the combination of which determines the local authority's degree of freedom;
4) local authority powers can never be analysed on their own, but must always be considered in the context of relations between local authorities and central government or regional authorities (in federal states or autonomous regions): in practice, the distribution of functions is often a sharing out of powers which may concern the matters addressed or the powers exercised, or both at once.

Powers (*compétence*) may thus be fully defined only with reference to the subject matter to which they apply (also termed "function"), the powers or duties intended to exercise it and the resources needed to implement it, as well as the holder of this power. Local self-government is a freedom, and the degree of freedom with which this function is exercised depends first and foremost on powers and resources. The extent of this freedom may of course vary, depending on the fields, periods and systems concerned, but where this freedom does not exist, there is no local self-government. If a local authority has neither power to act nor free use of resources, it is merely an agent of the higher authority in the exercise of the functions assigned to it. Truth to tell, it is no longer really the holder of a power (*compétence*), but a performer of tasks. It is for the law to set limits to this freedom, since local authorities are not isolated units and autonomy is always a relative concept, but without such freedom local self-government no longer has any political substance and ceases to exist.

Determining who actually holds the powers (*compétence*) seems less important. The problem is whether it is the local authority, as a corporate legal entity, that holds the powers, or the organs defined by law. The position varies from one country to another, depending on their legal tradition.

In most European countries, the view taken is that it is the local authority, as a body enjoying legal personality, which holds the powers exercised by its organs. Local authority is an abstract legal concept, but the organs are simply the expression of that concept. In other countries local self-government rests only with the organs that exercise it.

English law uses the concept of "local authority", which has an institutional meaning and applies to local councils and to other institutions equated with them owing to the nature of their powers. It is a concept distinct from the French one of "*collectivité locale*". These local authorities are the holders of the legal personality recognised by law (corporate status). The Local Government Act 1972 clearly established that councils have legal personality: a county or district council "shall be a body corporate" – section 2. Under the previous law, on the other hand, all boroughs were corporations under the terms of a charter granted by the sovereign exercising royal prerogatives. The House of Lords held that since the 1963 Act the London boroughs had been statutory corporations, but also that the council rather than the borough as such was the local authority.[1] This case-law brought the legal position of the London boroughs closer to that of local authorities, which were now clearly equated with councils. It also reinforced supervision by local authorities of compliance with the limits placed on the boroughs' powers under the doctrine of *ultra vires*.[2] This approach was indirectly bolstered by the Local Government Act 2003 (c.26), whose section 23 lists the bodies regarded as local authorities for the purposes of the first part of the act (power to borrow and to commit capital expenditure): it includes only the main councils (and therefore excludes parish councils and local community councils, regarded by other legislation as local authorities) and functional authorities (such as a police authority under the 1996 Police Act), as well as joint authorities, which

1. *Hazell v. Hammersmith and Fulham London Borough Council [1991]2 W.L.R.372*, §§ 1-13, and Lord Templeman pp. 562-566. It thus held that the council could not exercise on behalf of the borough powers which were not included among the statutory legal powers conferred on the council (Lord Templeman, pp. 372 and 396).
2. For details, see: *Cross on Local Government Law,* Sweet & Maxwell, looseleaf book, publ. 1996, updated 1998, No.1-03 to 1-07.

combine several local authorities. So it is clearly the statutory organs that hold the powers.

In Russia functions are assigned by law to local authorities (sections 13 to 15 of Law No. 131 of 6 October 2003), but the local authority's council and administration are distinct legal entities (section 37(7)). The same applies in Ukraine. Under the 1997 Local Government Law, currently in force, "local government organs shall have legal personality" (section 16.1); the bills made public by the Ukrainian Government in autumn 2005 go still further, since councils, their various executive bodies and even the urban district councils, where these exist, have legal personality (draft law on municipalities: section 19.1; draft laws on local self-government at district level and local self-government at regional level: section 18). This conception has many disadvantages: it weakens the supervision of executive bodies and poses problems when it comes to allocating certain rights, including the right of ownership over local authority property.

But it is in fact different from the British conception, which does not question the unity of the local authority and is in this sense closer to the continental west European conception.

The law can also confer own powers on a local authority body without the latter being required to have distinct legal personality. This is the case in France, where the municipality is assigned numerous functions, but some are conferred on the mayor in person; not all of them are delegated powers, especially policing powers.

In the area of concern to us, however, these institutional differences are significant only insofar as they affect the degree of freedom with which the powers (*compétence*) are exercised: if, for instance, delegated powers are merged with actual functions, or if the attribution of legal personality to an organ facilitates supervision by the higher authority. In this report, only secondary importance will therefore be attached to differences in terms of the body which is the legal holder of the powers.

B) Features common to the municipality as an institution in European countries

It is a striking fact that notwithstanding the great variety of forms taken by the municipal institution, there are several common features crucial to our analysis

of the system of powers and functions, irrespective of the nature of the state (unitary, federal or comprising autonomous regions):1) The principle of local self-government is recognised by the constitution or the law; 2) The general nature of local competence (*compétence*) is recognised; 3) Functions (*compétences*) are laid down in law; 4) Local authorities have a regulatory power for the exercise of their functions; 5) Their power to levy certain taxes is always recognised; 6) There is always supervision; 7) There are always procedures safeguarding local self-government.

1) The principle of local self-government

The terminology used for the principle of local self-government varies, expressing a political will to give local authorities some latitude in the exercise of their powers. It is this principle which enables a political, and not solely administrative, dimension of municipal institutions to be recognised. The principle itself has several dimensions, found in the legislation of European countries:

- an institutional dimension, expressed through the election of the council and usually of the executive, through legal personality and through local institutions' freedom to take decisions;
- a substantive dimension relating to the functions (*compétences*) exercised by virtue of this self-government;
- a financial dimension expressed through the existence of budgetary powers;
- and a certain freedom of internal organisation.

On the other hand, it is impossible to draw conclusions in legal terms from the fact that some countries use the word "autonomy" (Spain, Italy, Portugal and Greece, but also Romania, which refers to "administrative autonomy"), while others refer to "self-government" (a term used in the United Kingdom, whereas Germany and Austria speak of *Selbstverwaltung*, and the Polish term is *samorząd terytorialny*). An examination of legislation and institutions shows that municipal authorities in the first group have no more functions or freedom of action than those in the second, and that there are other reasons for any differences between them. The legal substance of these different formulations is identical, and comparable to the concept of "local self-government" used in the European Charter of Local Self-Government.

Local self-government, however, is not regarded as a way of expressing the sovereignty of the people, other than in a few constitutions (Sweden and Ukraine), where this has no tangible consequences. The *Conseil d'Etat* in France regards the principle of self-government (*libre administration*) as a fundamental freedom, so the *référé-liberté* urgent application procedure may be used if this freedom is violated, so as to put a stop to the violation concerned. But this does not mean that local self-government is less well protected in other countries.

These observations show that we should not draw hasty conclusions from terminological differences and the theories to which they sometimes give rise. An analysis of the relevant texts and practices is essential. The principle of local self-government may, however, be regarded as the basis for the "general competence clause" covering local authorities, or rather for the general nature of local competence, now accepted in almost all European countries.

2) The general nature of local competence

Almost all European states now, either in their constitution or in their legislation, acknowledge the general nature of municipalities' competence. Whatever wording is used, the "general competence clause" is always indeterminate, for it implies freedom, rather than being a principle for the attribution of functions. It means that the municipality may act in any matter, subject to its action meeting a local interest, complying with the law and not impinging on the powers of another central or sub-national authority.

Some countries come close to this without expressly stating it in their legislation; in some cases, positive law is somewhat uncertain on this point; in a few countries, however, the law makes no provision for the principle of a general competence clause.

In the United Kingdom, where the doctrine of *ultra vires* is applied to local authority acts (meaning that councils can only do what they are expressly empowered to do by law), section 2 of the Local Government Act 2000 (and its counterpart in Scottish law) now grants local authorities general power to promote the economic, social and environmental well-being of their area. The restrictions in section 3 of this act are comparable to those found in countries whose law expressly includes a general competence clause, but local authorities are not allowed to borrow in order to exercise this freedom. However, this last restriction seems to have been eased by the Local

Government Act 2003, which allows local authorities to borrow freely for their capital expenditure on any functions conferred on them by law (sections 1-3 and section 12 in particular), subject to compliance with prudential rules.

In terms of positive law, the issue is still under discussion in some countries. In Portugal neither the Constitution nor the latest legislation, deriving from the reform of local government powers in 1999, include an identifiable principle of general municipal competence; it might be possible to infer it from the wording of section 53 (l, q) of Law 169/99, taken from a previous law, but there is no case-law to that effect. In Spain, the white paper published in early 2005 with a view to reforming local government considers that the wording currently used in the 1985 Law on the Basic Principles of Local Government does not give sufficiently clear expression to the general competence clause;[3] the new preliminary draft law on the basic principles of local self-government includes a section expressly granting general competence to municipalities (section 21).[4] In Italy, if the new Article 118 of the Constitution, which concerns the municipalities' "own administrative functions", were interpreted in terms of the "basic functions" established by national legislation,[5] according to Article 117, this would call into question the general competence clause established in Italian law since Law 142/1990. Lastly, there are some exceptions in central and Eastern Europe.[6]

At intermediate level, the situation varies more. In some countries (such as France and Sweden), the general competence clause benefits all local authorities, which does not preclude specialised functions, since it is of a residual nature; local authorities at intermediate level in other countries exercise only those powers attributed to them by law or delegated to them by municipalities (examples being Germany, Spain, Hungary and Poland). In Germany, the legislation of the *Länder* usually defines the powers of counties (*Kreise*) in greater detail than does Article 28 of the Basic Law.

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3. Ministerio de Administraciones Publicas, *Libro blanco para la reforma del gobierno local*, Madrid 2005, especially pp. 48–56.
4. *Anteproyecto de ley básica del gobierno y la administración local*, Ministerio de las Administraciones públicas, Madrid, July 2006.
5. For an analysis of this discussion: Luca di Lucia, "Le funzioni di province e comuni nella costituzione" *Rivista trimestrale di Diritto pubblico*, 2005, No.1, pp. 23–82.
6. Albania, Bulgaria, Bosnia - Herzegovina, Croatia, Serbia (but not Montenegro, since a law enacted in 2003), Moldova. For an overview of the general competence clause in comparative law, see: G. Marcou, "La clause générale de compétence dans les Etats européens", *Pouvoirs locaux* No. 68, 1/2006, pp. 58–63.

The general nature of municipalities' powers does not prevent the law from assigning municipalities specific functions, and the scope of the freedom of action which they enjoy to exercise these also gives an indication of their independence. In practice, activities performed under the general competence clause are always of a residual nature in all the functions exercised; the volume of activity chiefly consists of functions determined or regulated by law.

3) Functions are always laid down in law

In no European countries are local authority functions defined by the constitution, for they are a matter for the law. Constitutions contain at most a general form of words characterising the nature of local functions, by reference to the nature of local self-government or to the management of local authority affairs. The Austrian Constitution differs in that it details the powers exercised by municipalities for the performance of their functions, including policing powers (Art. 118), but it does not indicate the subject matter of those powers. This may be a way of differentiating between local (or similar) authorities proper and autonomous regional authorities or federate entities, whose functions are always laid down in the constitution or in a law subject to special procedure (such as Belgium's special law on institutional reform).[7]

The same is true of the legal system of federate entities. As a general rule, legislative power with regard to local authorities and territorial organisation in federal states is in the hands of the component entities. But the constitutions of the members of the federation do not contain any more provisions on local functions: it is in regional legislation that provisions relating to local authority functions can be found.

The substance of local functions thus derives from general legislation on local authorities and from numerous sectoral laws which regulate the substance of local functions in the relevant sectoral law areas. As this sectoral legislation may be restrictive, efforts have sometimes been made to protect local functions from such interference. In Hungary, for example, Law No.LXV (amended) of 1990 on Local Authorities defines the fields of local functions and, according to the Constitution, this law can be amended only by a two-thirds

7. Exceptions: in the United Kingdom the status of regional authorities is determined by ordinary legislation, since there is no written constitution to provide otherwise, and in Hungary legislation on local government is subject to a special procedure requiring a two-thirds majority of the members of parliament present (see below: Hungary) – which in practice makes it difficult to amend the legislation.

majority. In Russia, the Law of 6 October 2003 on Local Self-Government stipulates that the functions of the local authorities which it sets up (sections 13 to 15) can be amended only by an explicit amendment of this law itself, although this is only an ordinary legislative provision. The Spanish government's January 2005 white paper on reform of the basic system of local self-government is intended to protect municipal functions from interference by regional or national sectoral laws which might adversely affect them (see the above-mentioned preliminary draft law, section 28.d).

4) The existence of a regulatory power for the exercise of functions

Here again, misunderstandings may stem from differences in terminology, so a few definitions will be given first. Regulatory power is the power given to an administrative authority to lay down general and impersonal rules and regulations establishing or amending the rights or obligations of subjects of law within its jurisdiction, within the limits of its powers (*compétence)* and on the basis of legislative provisions or regulations laid down by higher administrative authorities. This is the power termed "standard-setting power" in many countries. It is a derived, never an initial, power.

The term "standard-setting power" goes back to the old theory of substantive law and is used in many countries, from Portugal to Russia. Another term sometimes used, particularly in texts in the English language, is legislative authority or body, in the context of local authorities' elected councils or the standard–setting legal instruments which they have the power to adopt, but this usage is deceptive where the legal nature of such documents is concerned.

Looking at the place of such instruments in national legal systems, there are far more common points than differences in terminology might initially lead us to expect.

In Spain, the standard-setting power of local authorities, which stems from section 4 of the General Law on Local Authorities, but is also a legal consequence of the autonomy principle enshrined in Article 137 of the Constitution, is described as a regulatory power. This regulatory power is exercised in pursuance of national or regional legislation, but is also used to regulate the functioning or use of local infrastructure and public services, or in the context of the authorities' general competence, insofar as this does not impinge on the powers of other administrative authorities.

In hierarchical terms, local regulations rank below regulations enacted by national or regional authorities as part of their own responsibilities; a different case is that of what are called implementing regulations, which relate to the local authority's own organisation, and which are directly subordinate to general law and, possibly, to regional law on local authorities. Other standard-setting instruments are of merely supplementary value in this field. The preliminary draft law does not introduce any changes in this respect.

The position is similar in Italy. *Statuti* are comparable to Spanish local authorities' implementing regulations, whereas *regolamenti* are the expression of a local regulatory power which might be described as "ordinary". While the 2001 revision of the Constitution brought great changes in the legal relations between central and regional government, it is not certain that the effect was the same where local authorities proper are concerned. They, like the regions, hold power to draw up their own constitutions (Art 114 (2)), but local authorities have this power under national legislation, since legislation on local government and the basic functions of municipalities, provinces and "metropolitan cities" is exclusively a central government responsibility (Art 117 p). The new Article 117 gives them regulatory power with respect to the "organisation and the fulfilment of the functions assigned to them", but in paragraph 6 which assigns regulatory power to the state in matters for which it holds sole legislative power and to the regions in all other matters. The concept of "function" is distinct from that of "matters", in which legislative power *and* regulatory power are shared out solely between the state and the regions, and refers to the "administrative functions" which are in principle exercised by the municipalities, unless the need for "unitary" exercise confers them on a higher authority (Art 118). Local is consequently subordinate to regional regulatory power, although the La Loggia Law (131/2003) specifies that the intervention of national or regional regulatory power in administrative functions assigned to local authorities must merely meet "the basic requirements of uniformity" (Section 4.4).

The Constitutional Court has already held that the new Article 114 does not establish full equivalence (*equiparazione*) between the authorities that it lists, and particularly between the state and the regions (judgment 274/2003, 24 July, reason 2.1 *in fine*, on a Sardinian regional law on the civil service).[8] Nor

8. According to the Court, Article 114 "does not quite introduce full equivalence between the authorities it covers, whose powers differ substantially from one another: it is sufficient to note that the power to revise the Constitution rests solely with the state and that the municipalities, metropolitan cities and provinces (with the exception of the autonomous provinces) do not have

does it establish full equivalence between the regions and local authorities in terms of regulatory power.

In Portugal as well local standard-setting power is in principle exercised by the deliberating bodies of municipalities, but also of their member parishes (*freguesias*), within the limits of their functions. As in France, there seem to be no special arrangements for rules of procedure.

The main difference as compared with the regulatory power of French local authorities, or at least of municipalities and *départements*, as laid down in the new Article 72 of the Constitution (revised version of 28 March 2003), but in practice in existence long before, is the fact that it is exercised mostly by the mayor, through mayoral orders, as part of his or her own powers, and not by the municipality as such. The exceptions are local regulations issued under a precisely defined system, such as local urban development plans or *département*-based welfare regulations.

In Germany, local regulatory power is exercised through *Satzungen*. This power, like the legal term applied to it, dates from long ago, very probably from the 1808 *preussische Stadtordnung*, well before the Basic Law existed. The Weimar Constitution recognised municipalities' right of self-government (*Selbstverwaltung*) (Art. 127). This regulatory power may now be regarded as an expression of the right of self-government which municipalities have under Article 28 of the Basic Law, but it originates directly from *Länder* legislation on counties and municipalities.

In England, the law gives local authorities power to issue regulations known as byelaws in their functional areas of responsibility, inter alia to ensure public order and public health. Such byelaws are often based on section 235 of the 1972 Act: "for the good rule and government of the whole or any part of the district or borough and for the prevention or suppression of nuisances". Many are also issued on the basis of specific laws. Their entry into force is subject to their being "confirmed" by the Secretary of State (= minister); the October 2006 White Paper "Strong and Prosperous Communities" (Cm 6939, § 3.14) announced that this requirement would be ended. Local councils may promote "Local Acts" in parliament in order to obtain special powers, needed

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legislative power". On the basis of this argument, the Court concludes that the state may, as before the constitutional revision, challenge a regional law on the grounds that it breaches any constitutional provision, while a region can challenge a national law only on the grounds that it breaches provisions governing the sharing out of powers and functions.

when general legislation does not give them the power to take direct action themselves.

In Sweden, the situation is very similar, with the exception of this last-named type of legislation, for Swedish local authorities are covered by a general competence clause; local authorities (an elected council and specialised committees to carry out executive functions) resemble those in the UK.

It is apparent from this brief overview that, albeit in countries with very different systems of local government, local regulatory (or standard-setting) power is nevertheless basically similar in its legal nature, its place in the hierarchy of the domestic legal system and its purpose, and that it is widely used. It has been relatively little affected by the institutional reforms carried out in several of the countries studied. It is allowed to be exercised without a specific legislative basis, but that is not the most important thing, for it almost always has a basis in more general provisions: the vital fact is that it is always subordinate to higher authorities' regulatory power, if they choose to intervene.

5) The power to levy certain taxes

The law in all the countries concerned, and sometimes the constitution as well (Germany, France, Italy, Poland, etc), provides for local authorities to levy certain taxes, setting the rate and in some cases collecting the money.

This power in itself is not indicative of the extent of the resulting financial power. In actual fact, the general tendency has been for local authorities' fiscal power to be eroded and for them to benefit more from the yield of national, or occasionally regional, taxes and from grants. In some countries, local authorities' fiscal power remains the basis of their financial independence (for example in Sweden, Belgium, France and Italy), while it is just an additional resource in others (Germany, United Kingdom, Hungary, Portugal, Netherlands and Spain). It is a power, however, which is constantly affirmed, so it is reasonable to think that it is still regarded as a significant attribute of local self-government.

6) Supervision

All the countries also have procedures for supervising the legality of local authorities' activities. This does not mean that there are no longer any checks

on expediency (or on the merits of decisions), for these continue in certain countries, according to sectoral logic. Looking beyond the principle, however, there is a degree of heterogeneity in this field.

In Spain, Portugal, France and Hungary, legality is reviewed after the event, only the courts having power to declare a measure unlawful. In Germany and Poland, the administrative authority scrutinises the legality of measures adopted by local authorities, which can then appeal to the courts against the supervisory act. In Sweden and the United Kingdom, a check on expediency is made in certain fields, as well as there being an opportunity to apply to the courts (e.g. appeals concerning the application of town-planning legislation).

The constitutional revision of 2001 in Italy put an end to the review of legality which used to be carried out by a regional supervisory committee; henceforth only the administrative courts may set aside a decision, without any particular procedure being laid down for relevant applications to it. Nevertheless, Article 137 of the Consolidated Law on Local Government (Legislative Decree 267, issued in 2000) does provide for an exceptional procedure: should a local authority take a decision likely to affect the legal unity of the Republic, the government may automatically set aside that decision, a power rarely used. There are also some fields where expediency is verified, one example being regional authorities' scrutiny of planning issues. This reform brings the situation in Italy closer to that which has long prevailed in the United Kingdom. It also remains to be seen which provisions will be adopted on the basis of section 2.4.m of Law 131, which requires the government's legislative decrees to ensure that "administrative activity complies with the law, the local authority constitution and the regulations".

7) Safeguards surrounding local self-government

All the countries have now instituted machinery for the judicial protection of local self-government. The degree of protection admittedly varies from one country to another. There are three types of situation: countries in which this judicial protection is a matter for the constitutional court, countries in which it is a matter for the administrative courts and countries in which it is a matter for the ordinary courts. However, we are talking about the dominant feature: there may be several types of judicial safeguard and they may co–exist in the same country.

Municipalities can apply directly or jointly to the constitutional court in Germany, Austria and Spain, and in Albania, Croatia, Hungary, the Czech Republic, Slovenia and "the former Yugoslav Republic of Macedonia" among others. In addition, in Italy, Portugal, Romania and Russia, local authorities may object to the civil or administrative courts that a measure is unconstitutional, and the constitutional court will then rule on the issue of conformity to the constitution. In France there is an indirect form of constitutional protection which involves parliamentarians referring an issue to the Constitutional Council, given that most of them are also local elected representatives owing to the practice of holding several mandates simultaneously. The most interesting examples of protection by the constitutional court appear to be Germany and Spain.

In Germany, Article 93.4b of the Basic Law provides for municipalities and groupings of municipalities (which include counties – *Kreise*) to apply directly to the Constitutional Court if their right to local self-government is breached by a federal law, or by a *Land* law if it is impossible to file a constitutional appeal with the *Land* constitutional court. Twelve *Länder* have a constitutional court but municipalities and groupings of municipalities can still refer a matter to the federal Constitutional Court if the violation of their right to local self-government is imputed to federal law. This entails abstract scrutiny of the standards in force. A constitutional appeal to protect the right to local self-government is close to a direct application to protect fundamental rights, but the right to local self-government is not regarded as a fundamental right insofar as local authorities are public authorities whose measures may also infringe the fundamental rights of individuals: that is why there is a distinctive form of protection for this right.

The constitutional revision of 28 August 2006 also expressly prohibits federal legislation from imposing tasks on municipalities and groupings of municipalities (new Art. 85.1, *in fine*).[9]

In Spain, the 1999 reform enabled local authorities to refer a matter to the Constitutional Court, but under very different conditions. The constitutional appeal introduced in Spain, although modelled on the German example, is a joint appeal; it is also a procedure involving the abstract scrutiny of the standards in force. Only the local authority directly affected by a law (whether national or regional), or one seventh of the municipalities of the area

9. *Bundesgesetzblatt I*, p. 2034.

concerned representing one sixth of the population, or one half of the provinces of the territory concerned representing one half of the population, can file a constitutional appeal; in the latter cases, those filing the appeal must apply to the State Council or to the competent organ of the autonomous community to ascertain whether the relevant territorial framework to which the applicant local authorities belong is part of one or more autonomous communities (LOTC, section 75bis, para.3). The white paper (2005) considers these requirements too restrictive and proposes lowering the thresholds for appeal and allowing the association of local authorities which is most representative of the territory concerned to appeal directly to protect local self-government.

A constitutional appeal does not preclude applying to the administrative courts. In Germany, local authorities may appeal to the administrative courts against supervisory measures that they dispute. The same is true of Austria; however, if the supervisory measure concerns a regulatory measure, jurisdiction lies with the Constitutional Court. In Spain too, local authorities may apply to the administrative courts to set aside an administrative measure.

In countries where judicial protection of the right to local self-government is a matter for the administrative or civil courts (depending in particular on the country's court system), this protection is provided under ordinary law procedures. These proceedings are conducted before the administrative courts in Belgium, France, Finland, Greece, Italy, the Netherlands, Sweden and Switzerland. They are conducted before the civil courts in Denmark, Ireland and the United Kingdom (judicial review), and also in countries such as Russia (usually the arbitration courts) and Estonia. But in France as in Spain, transferring the power to set aside a local authority measure whose legality is disputed to the administrative courts, not to the higher administrative authority, amounted to introducing a safeguard for the right to local self-government.

Though the scope and effectiveness of these procedures are very uneven, there is a distinct trend towards strengthening judicial safeguards for local self–government.

C) Distinguishing criteria

These differentiate between countries' systems of local government organisation, where this is relevant to a study of powers and functions. Four criteria will be examined: 1. Functional fragmentation or integration; 2. The

unity or duality of local government organisation; 3. The implementation or absence of territorial reform; 4. Local public expenditure as a percentage of GDP.

1) Functional fragmentation or integration

Today, local democracy denotes local authorities possessing elected bodies and exercising general competence, or at least a wide range of functions, so that all the administrative functions concerning local affairs are exercised by the municipal authorities. Historically, the municipality has developed on the basis of this model, whether in France, Sweden or Portugal, or in Eastern Europe in step with the process whereby legislation separated local government from land ownership.

In the United Kingdom, however, local government first emerged with the establishment of local administrative units designed to perform specialist functions. As of the early 19th century a series of laws set up the elected bodies responsible for these functions, which were assigned their own taxes in order to fund them: the Poor Law Guardians (1834), the Sanitary Districts (a series of reforms launched in 1848) and Public Education (1870). At the same time, other laws provided towns with institutions performing a fairly broad range of tasks (since the 1835 Municipal Corporation Act). By the end of the 19th century these two trends had resulted in some confusion, and further reforms introduced multifunctional local authorities incorporating the functions of the specialist authorities, which were abolished. But it was not until 1929 that the law prompted by the crisis in local finance introduced a truly comprehensive reform. Since then, British local government has been distinguished by general purpose local authorities incorporating the various functions assigned by law to local authorities, but the model of specialist authorities has left its mark on British administrative tradition and on that of countries under British influence. Subsequently, the return to specialist administrative authorities went hand in hand with the pursuit of national public policies placing certain functions under central government authority: after the war, the establishment of the National Health Service and the nationalisation of gas and electricity; and in the 1980s, the urban corporations and the educational reform which placed some schools under central government authority, making school management independent of local authorities. Today, efforts are again being made to introduce territorial consistency. According to the October 2006 White Paper (mentioned earlier), local authorities must exercise strategic leadership with regard to their partners, under Local Strategic Partnerships (of which there are

now 360); the planned law will enable the Secretary of State concerned to require the partners and the local authority itself to meet the priority objectives in the Local Area Agreement concluded with central government which come under their remit (§ 5.41 and 5.42).

The Netherlands also had a very old form of elected local authority performing a specialist function: the *waterschappen* (*wateringues*), which are still independent of local authorities. Today, many national autonomous authorities (ZBO) perform specialist tasks at local level.

In other countries legislation has provided for certain local authority functions to be performed by public establishments subject to central government supervision. This was a device enabling central government to implement national policies while leaving some local powers and functions intact (for example in France in areas such as housing and public health).

However, setting up specialist local authorities was also a means of remedying the fragmentation of municipalities, with the development of local authority consortia in France, as well as in Germany (until the 1965–1975 territorial reform) and Italy.

Local authorities now perform most of the devolved local government functions in all European countries, and this has served both to rationalise local institutions in functional terms and to make them more democratic; however, sectoral reforms intended for social or economic purposes and inspired by privatisation and outsourcing policies are again going hand in hand with the setting up of specialist institutions to which a number of local functions are transferred (in the Netherlands, for example, the setting up of low–cost housing foundations, over which municipalities now exert only indirect influence).

2) The unity or duality of local government organisation

Local authority status is unitary in some European states, but of a dual nature in others. This is a quite different matter from the number of tiers or levels of local government. Unitary status is rightly traced back to the French Revolution, whereas a difference in status between town and country persisted only in central Europe east of the Rhine. In practice, in the 19th century, only towns were initially granted self-government, while, until the final third of the century, rural administration often remained a matter for large landowners. As

of 1808, Prussian towns were given the freedom to manage local affairs, a system which only reached the countryside in 1891, and the situation was similar in the Habsburg Empire. This explains why, in Germany, all towns of a certain size are treated as being outside, and not subject to the authority of, their county, while Austria's "towns with their own charter" enjoy a greater range of powers delegated to them by the state. Similar schemes are found in former Eastern Bloc countries once part of one or the other Empire. This was also the case in Russia as from 1870 (the introduction of elected municipal institutions in towns); the administrative distinction between town and country was preserved for different reasons during the Soviet period and underpins the 2003 reform establishing the new system of local authorities in the Russian Federation.

The history of dual status in Sweden and Denmark is different, and duality gave way to a unitary municipal system[10] when territorial reform took place in the 1970s. Only in England does a duality of status between town and country correspond to a "modern" situation: at an earlier stage there than elsewhere, the Industrial Revolution threw up the question of adapting territorial structures which had come down from the Middle Ages to the concentration of the population in cities. The Municipal Corporation Act 1835 laid the foundations for a system of urban administration, and the reforms of 1887-1899 created a tripartite structure (county, county borough and London) which was retained, albeit subject to significant alterations, at the time of the 1972 and 1996 territorial reforms. This differentiation will fade as the single local authority advocated by the British government in the 2006 White Paper becomes more widespread; the dual structure of county and district in non-metropolitan areas should become the exception (§ 3.55).

However, there is a tendency to confer different status on big cities, either to reflect their function as capital cities or to try to cope with the challenge of managing cities. This trend often involves assigning the city municipality regional status, or status equating it with the next tier of government. For example, Berlin, Hamburg and Bremen in Germany have the status of *Länder*, so does Vienna; Brussels and Prague are regions; and London is also a region, with special statutory arrangements, a mayor elected by universal suffrage and regional-level functions together with the normal functions of a local authority. Moscow and St Petersburg are fully fledged subjects of the Russian

10. The executive is nevertheless differently structured in Denmark's four largest cities, centring on the "magistracy", a collegiate body chaired by the mayor. Copenhagen and Frederiksberg are simultaneously municipalities and counties (known as *amtskommuner*).

Federation; Budapest has special status under the Constitution; and Paris is both a municipality and a *département*, combining the functions of both. In Spain, special legislation has just been passed on the special status of Barcelona (Law 1/2006 of 13 March) and that of the capital Madrid (Law 22/2006 of 19 July). This trend towards a different status for big cities is due to very different factors from those inherited from the 19th century patterns of territorial organisation mentioned at the beginning of this section: it is spurred by metropolitan functions in general and in some cases by the functions of a capital city.

3) Territorial reform

Urban development raised the question of the level of exercise of municipal functions in every country. Responses varied: enlargement of municipalities to match the size of their cities (the solution adopted in Germany, Belgium, Denmark, Sweden and, since 1998, in Greece as well) and/or creation of a second tier of municipal government (France, Italy and Spain, but also Germany), although these reforms did not affect only urban areas, where they often failed (Spain, Italy and the Netherlands). It has to be said that the first solution does not obviate the need to use the second, because of the growth of cities (the case of Frankfurt and Stuttgart, for example).

In the Scandinavian countries a second territorial reform is under discussion. In Denmark a new form of local government organisation, with only 98 municipalities (instead of 275) and five "regions" (whose main function will be to manage the health care system) instead of 14 counties, came into force on 1 January 2007. In Sweden, proposals to promote a further regrouping of municipalities may be submitted in 2007 in the report by the royal commission concerned. However, Norway does not appear to be following this trend.[11]

4) Local public expenditure as a percentage of GDP

The proportion of local authority expenditure varies according to the types of function these authorities exercise in their country, as reflected in this indicator. In the following paragraphs account is taken only of local authorities in the strict sense; the expenditure of federate entities or autonomous regions is not regarded here as local authority expenditure, but as equivalent to state

11. P. Bogason/J. Pierre/N. Aarsaether (2006). "L'architecture de la gouvernance locale scandinave en changement". *Annuaire 2006 des Collectivités locales*, GRALE, CNRS Editions (to be published in September).

expenditure in relation to local authorities. The percentage of GDP is higher where local authority functions require larger numbers of staff.

The countries concerned fall into three groups:

– countries where local public expenditure is around 5% of GDP (Portugal, Spain – 5.90%, and Italy – 5.3% in 2005);
– countries where it is close to 10% (Germany, France, Hungary, the United Kingdom, Poland and the Netherlands); in most European countries, local public expenditure is between 6 and 13% of GDP;
– countries where the figure is above 20% (Sweden and other Nordic countries).

These figures reflect the economic weight of the management functions performed by local authorities, particularly their importance as part of the exercise of "welfare state" functions, but they do not accurately reflect the scale of the functions local authorities exercise, because the user-funded services assigned to the private sector under the supervision of the local authorities concerned or even to local public enterprises outside the local authority are not included in the local public expenditure measured in this way.

Also, these figures are not indicative of a greater or lesser degree of independence according to the volume of local public expenditure; it depends entirely on the conditions in which this expenditure is managed.

II. Comparing systems of local powers and functions

The purpose of comparing systems of local powers and functions is to assess the extent of local authorities' freedom of action in the light of the relations they necessarily maintain with state authorities or regional authorities (federate entities and autonomous regions).

The idea is to propose a method of analysis which can be applied to particular situations in order to assess the combination of powers and functions that determines the extent of local authorities' freedom of action. As will be seen, it is often hard to make an overall assessment because the situation can vary from one sector to another. The intention was also to identify a few models or "ideal types" on the basis of the comparison, so as to make it easier to classify the countries in relation to each other, even if this meant simplifying a little. However, the comparison does not lend itself to clearly identifying such models, unless we refer to historically dated types which no longer match the current realities of the countries concerned.

The comparison is confined to municipalities and supra-municipal authorities which can still be regarded as local, though the definition of "local" is always somewhat uncertain. It therefore excludes the regional level, except insofar as the latter's relations with the local level affect the powers and functions of first-tier authorities. The first part of the report gave a few definitions and identified the common elements of the various systems and the factors differentiating between them. We now come to the comparison. The summaries in the appendix point up the distinctive features of the local government system in each of the sample countries studied.

This part begins with a review of the powers and resources available to local authorities. The author then compares local authority functions and the legal conceptions of those functions applied in the countries examined. Lastly, functions are linked to powers and resources in order to give a methodical presentation of the various types of relationship between local authorities and higher authorities and assess in each case to what extent they determine the degree of freedom enjoyed by local authorities.

A) Comparing powers and resources; the institutional context

The table below, which is followed by comments, sets out the legal, material and financial means enabling local authorities to exercise their functions.

Essentially, however, power is always a relationship; in particular, while local self–government (*autonomie locale, Selbstverwaltung*, etc) is a power, it can be understood only in terms of the relations between local authorities and the state or the higher authorities with which they interact. This section therefore discusses local finance, supervision of local authority measures and contractual relations, which in many countries have assumed considerable importance in relations between institutions, especially vertical relations.

Account will also have to be taken of the development, in some cases, of specialist institutions which have been established by central government in areas traditionally regarded, in a given country, as local powers and functions and which serve national policy objectives, but reduce the scope of local authorities' powers or freedom of action. These specialist institutions cannot always be viewed as a form of functional devolution: on the contrary, they are generally organised on a national basis, with local establishments.

The growth of institutions of this type must also be viewed in the light of their consequences for local self-government. As we have seen in the previous section, this type of institutional development sometimes goes back to the origins of modern local government; here, reference will only be made to countries in which it takes new, present-day forms.

Insofar as the size of municipalities (local authorities) conditions their management capacity, although the two are not fully correlated, it is helpful to single out the countries where large municipalities predominate and where territorial reform has been carried out. Some lines in the table may cover two items of information. The "Comments" column provides additional information designed to make the table easier to read.

Table No. 1: Local authority powers and resources

Powers and resources	*Germany*	*Spain*	*France*	*Hungary*	*Italy*	*Netherlands*	*Portugal*	*England*	*Sweden*	*Comments*
Countries with large municipalities						X	X	X	X	Germany: the situation varies from one *Land* to another. France: 89% of municipalities and 83% of the population are covered by inter-municipal groupings
Territorial reform	X					X		X	X	
Regulatory power	X	X	X	X	X	X	X	X	X	Differences as to the limits of regulatory power and the institutions exercising it
Freedom of choice in terms of organisation and type of service management	X	X	X (except energy)	X (except educa-tion and health)		X	X			Sweden: freedom to organise local administration, but national regulation of services. UK: easing of regulations with Best Value Authorities
Fiscal power (for tax yields > 40% of total resources)		X	X		X				X	No account taken of tax resources over which local authorities do not exercise fiscal power

Powers and resources	*Germany*	*Spain*	*France*	*Hungary*	*Italy*	*Netherlands*	*Portugal*	*England*	*Sweden*	*Comments*
Area-based departments of state or regional authorities	State: 0 Land: strong	State: weak Region: strong	State: strong	State: strong	State: weak Region: weak	State: strong	State: strong	State: strong	State: weak	Contrasting trends: increase (UK) or decrease (Spain, France, Italy)
Functional devolution and specialist institutions in areas of local authority competence						X		X		Mainly concerns education, vocational training and the police
Supervision of local authorities' own measures										Dispersal of supervisory authorities and arrangements in Spain and especially in the Netherlands, the United Kingdom and Sweden
- legality only	X	X	X	X		X	X	X	X	
- subsequent		X	X	X			X	X	X	
- prior	X					X				
- substantive in cases prescribed by law	X	X		X	X	X	X	X	X	
Contracts with the state or higher authorities		X	X		X	X	X	X		

This table includes a number of simplifications. It does not take account of the application of isolated provisions which would have resulted in crosses in other boxes but would in fact have skewed the table, since this type of representation does not allow data to be weighted.

The headings selected also call for comment. The table in fact combines two kinds of information: 1. information describing the institutional context in which local authorities act: for example the size of local authorities, the existence of field departments of state or regional authorities, and supervision of local authority measures; 2. information reflecting local authorities' means of action: regulatory power, freedom of choice in terms of organisation and type of service management, fiscal power and contractual co-operation with the state or the regional authorities.

The information on the institutional context gives an idea of the factors affecting local authorities' freedom of action: thus, in countries featuring large local authorities, the latter have broader administrative capacities for exercising their powers and functions; supervision of local authorities' own measures may be more or less strict or effective depending on the arrangements for it and the manner in which it is practised. Only legal and institutional differences can be noted here. But it must be borne in mind that the scope of supervision is not simply determined by the frequency of the acts demonstrating the supervisory authority's intervention, but by the fact that local authorities know the supervisory authority will very probably intervene if they do not comply with the instructions they know they have to obey. The author has deliberately disregarded hierarchical supervision of functions performed on behalf of the state or the regional authority, since it is acknowledged that there is no room for local policies in the case of these functions.

It will also be noted that contrary to a commonly accepted view, local and regional government in all countries includes a dense or not so dense network of state or regional authority departments in addition to local authorities. "Regional authority" refers here, in the countries studied, only to the German *Länder* and the autonomous regions. In Spain and Italy, precisely, the decline of the state's field departments, which were originally built along Napoleonic lines, goes hand in hand with the growth of the regional authorities' field departments, which are to a certain extent replacing them. Even in England, where there were traditionally no such departments, they have developed since 1994 in the form of the Government Offices of the Regions in the eight

administrative regions and London, combining the regional departments of ten ministries (instead of four in 1994). In addition, many national institutions placed under ministerial authority perform functions of importance to local community life; they include many establishments classified as "quangos" such as the Regional Development Agency, the National Health Service and the local police authorities; the dispersal of central government departments on a sectoral basis should not cause us to underestimate their importance in both administrative and local government policy terms. In France, the reforms associated with devolution (*décentralisation*) have simultaneously resulted in decentralisation (*déconcentration*) being established as the local mode of operation of the state, performing the functions for which it is responsible under its own steam, and in a reduction of the volume of these departments, many of whose staff have been or are going to be transferred to local and regional authorities, whose functions have been broadened.

Even in Italy, where the *prefetti*'s role has dwindled considerably over the last few decades, the recent reforms aim to make it more effective and, in the context of the autonomous regions, to restore the *prefetti's* function as links between central government and local authorities; this is to be done particularly through the "standing conference" formed by their representatives, which was set up by Legislative Decree 300 in 1999. A new decree of the President of the Republic (DPR 3 April 2006, No. 180) reinforces the prefect's authority over "peripheral" government departments and in representing central government vis-à-vis the "system of authorities" and ensuring their "loyal co-operation".

As regards the means of action available to local authorities, the information set out in the table concerns only those relevant to the analysis attempted in this report. Thus, the direct management or the organisation of public service provision to the population is a basic function performed by all local authorities. Here, however, it is discussed only through the local authority's freedom to organise its administration and choose its type of service management. Also selected are regulatory power, fiscal power and lastly the existence of contracts with the state or higher authorities. These elements give an idea of a local authority's capacity to frame and implement local policies.

A few definitions are still needed at this point. "Regulatory power" is used here as defined in the first part (section I.B.4). Under the terms of the law, this is sometimes distinct from the power to adopt the local authority's constitution (Italy); but the constitution regulates only the local authority's institutions, not

its powers and functions, so it is not necessary to discuss it here. Fiscal power means the power to introduce a tax, to determine its assessment basis (at least partially) or to decide on the tax rate and on exemptions, or several of these aspects; it therefore reflects the capacity to directly affect the amount of the local authority's tax resources. Contracts here mean public contracts concluded between local authorities and higher authorities, which reflect a form of vertical co-operation or co-ordination between public authorities.

Account should also be taken of the rates set for public services, but the various situations are heterogeneous and not enough information is available.

The following comments can now be made:

Firstly, in all the countries studied, local authorities exercise regulatory power for the purpose of performing their functions and this regulatory power is subject to compliance with the law and with the regulations of higher authorities. In spite of the 2001 constitutional revision and Law 131/2003, Italy is no exception. Firstly, parliament still controls the degree of detail incorporated into legislation and it remains to clarify the meaning of "administrative function" in terms of the application of the law. "Administrative functions" must no doubt be distinguished from the "basic functions" referred to in Article 117, para. 2p of the Constitution, which fall within the exclusive competence of the national parliament. Law 131 sheds little light on these distinctions. On the contrary, when defining the scope of national or regional regulatory power in relation to these local authorities' regulatory power with a view to the performance of their functions, it disregards the distinction drawn by Article 118.2 of the Constitution between local authorities' "own administrative functions" and the administrative functions conferred on them by national or regional legislation according to their respective spheres of competence, which suggests that municipalities might have greater freedom in exercising the former functions.

Lastly, it must be pointed out that elsewhere than in Italy the holder of regulatory power may vary: it may be the deliberative assembly (the usual case) or the executive (the mayor in many cases in France).

Secondly, local authorities are normally free to organise their administration and choose their method for managing the public services within their remit which must be provided to the population. There are sometimes exceptions to this freedom in respect of particular services (France, Hungary), while in other

countries (Italy, United Kingdom) the conditions governing the organisation of departments and the choice of operating method for certain services are on the contrary regulated by law, over and above the common rules governing notice and tendering. In the United Kingdom, however, since the Local Government Act 1999, the regulations have been eased: each local authority is a Best Value Authority and must seek to improve its performance under central government supervision (via the Audit Commission) and with the support of the government and associations of local authorities. In Sweden, freedom to organise local authority administration was the most important measure introduced by the 1991 law in order to give municipalities greater freedom of action, whereas these arrangements were previously determined by sectoral legislation. A similar development appears to have taken place in the United Kingdom.

Thirdly, the situations in the various countries diverge most markedly with regard to fiscal power, but against the background of a common trend: the erosion of local authorities' fiscal power. The only exception to this is Italy, where the law has restored municipalities' and provinces' fiscal power since 1993. The distinguishing criterion adopted here is the exercise of fiscal power over a volume of at least 40% of total resources. This is not an arbitrary threshold, but one determined as a result of previous studies demonstrating that the structure of resources changes from this level upwards; above this level, there is an approximate balance between the different categories of resources, whereas below it, local budgets depend increasingly on transfers. Last but not least, below this level, any tax increase calls for substantial rates of increase in order to generate a significant surplus in resources, and increases of this kind are always difficult to introduce in political terms, which neutralises fiscal power. Among the sample countries studied, only Spain, France, Italy and Sweden have conferred real fiscal power on local authorities. However, it must be borne in mind that reforms of local finance are designed to reduce local authorities' fiscal power even where the country's constitution includes provisions that may suggest otherwise.

This trend is masked by the current presentation of local authority tax resources, which is based on the origin of the resources and disregards the attribution of fiscal power. In Germany, for instance, the municipalities' share is counted as part of the yield of income tax, over which municipalities have no control, and in the United Kingdom the business rate is counted among local authority tax resources, whereas this tax is levied at national level and redistributed among local authorities according to population; in France too,

besides the fact that the assessment basis of the trade tax has been reduced and several local taxes have been abolished (eg the annual tax on motor vehicles and the regions' housing tax), the presentation of local authorities' total tax resources incorporates the *départements'* share into the yield of the domestic tax on petroleum products (a tax included in fuel prices), over which the *départements* have no influence. This presentation masks the facts, at any rate if one is interested in local authorities' powers and functions and in assessing the extent of their freedom of action.

Lastly, contractual relations between public authorities with a view to organising co-operation or co-ordinating their activities are becoming rather more widespread in European countries. This is essentially a vertical relationship, but Italian legislation also allows agreements between authorities in the same tier of government. Six main countries among those studied feature contractual relations: Spain (between autonomous communities and municipalities, but also very frequently between the state and the autonomous communities), France, Italy, the Netherlands, Portugal and, since 2004, the United Kingdom. In most cases these contracts cover programmes or projects and joint financing. The regulations governing them are most detailed in Italy and Portugal, and the contracts are most widespread in France and those two countries. In England, through the Government Offices of the Regions, the government has supported the development of local "partnerships" between local authorities and central government in order to implement particular policies (Local Strategic Partnerships). Since 2004 it has developed Local Area Agreements "to strike a balance between the priorities of central government and local governments and their partners in the way that area funding is used" (White Paper mentioned earlier: § 5.34). The White Paper provides for these LAAs to be brought into general use and to become mandatory, resulting in commitments by the signatories, to whom the Secretary of State concerned will be able to give directions when it comes to government priorities (§ 5.35 to 5.43; § 9.7).

The fact that they do not exist in other countries, with very few exceptions, does not mean that the implementation of public policies does not call for forms of joint action between local and central government or for co-ordination between the different public authorities. On the contrary, there are other ways of doing it. In Germany, the *Länder* consult local authorities in many different ways, which may be summed up by the principle of "reciprocal flows" (*Gegenstromprinzip*); in Sweden, national agencies set standards and maintain a dialogue with local authorities on the exercise of these powers and

functions and the pursuit of good practices. However, a contract reflects an effort to integrate policies, which is not as apparent in the other arrangements listed above. This explains the ambiguity of a contract: as such, it simply regulates joint action by agreement between the parties, but it can just as easily foster central government control over local policies as an indirect extension of local authority powers or functions. So what needs looking at is contractual practice rather than the contract itself.

The European Charter of Local Self-Government provides for local authorities to be consulted in the planning and decision-making processes for all matters which concern them directly (Art 4.6). It does not provide for joint action but does not rule it out either; so it is sufficient for such action to take place in a manner compatible with the other provisions of the Charter.

B) Comparing functions

While powers are exercised by the institutions in which they are vested, functions are assigned to local authorities as such. This is clearly reflected in the recent Portuguese legislation – Laws 159 and 169/1999 – providing that in local authorities' functional areas of responsibility (*atribuções*) their organs exercise powers which apply to certain functions (*competências*).

The different countries studied have different conceptions of the classification of functions, on the basis of the powers, duties and forms of supervision associated with them.

Firstly, it must be noted that general competence is explicitly accepted in almost all countries. Portugal and the United Kingdom remain the exceptions: as regards the former, the literature considers that the law is to be interpreted along the lines of a general competence clause, but does not quote any case-law to that effect, while in the United Kingdom the Local Government Act 2000 has certainly narrowed the gap between the existing situation and general competence.

The most widespread classification of functions in continental European countries is that which distinguishes between own and delegated powers (functions)*. Own powers are those which the local authority exercises freely

* Translator's note: The translation of the French term "compétences" adopted in this report – "functions" – is unusable in this and a few other passages because standard English usage

under the terms of the law, on its own behalf, and for which its organs are answerable to their electorate. They are associated with the legal concept of local self-government. Delegated powers stem from a delegation of power by the state (or a higher authority) to local authorities, which exercise them on behalf of and under the supervision of the state (or the higher authority); these powers can only be added to own powers: they do not form an alternative category. The European Charter of Local Self-Government makes provision for delegated powers (Art 4.1 and 4.5); it provides that in exercising delegated powers, local authorities shall "insofar as possible" be allowed discretion in adapting their exercise to local conditions. Delegated powers are a more frequent occurrence in Germany, Spain, France, Hungary, Italy and the Netherlands. There are fewer of them in France on account of the network of decentralised government departments, which perform functions specifically assigned to the state. In Italy these powers are assigned by law to municipalities in the form of the "administrative functions" conferred on them by national or regional legislation.

Under Article 4.4 of the Charter, "powers given to local authorities shall normally be full and exclusive". According to the explanatory report on this article, "in the interest of clarity and for the sake of avoiding any tendency towards a progressive dilution of responsibility, powers should normally be full and exclusive". The requirement of "full and exclusive" powers can apply only to own powers, since they are the only ones fitting the definition of the principle of local self-government in Article 3.1 of the Charter. The explanatory report also indicates that the provision of Article 4.4 concerns powers, not functions as such – a fact reflected in the above-mentioned wording of the English version of Article 4.4. However, it must be remembered that the term "powers" is used in this article to denote the combination of the subject matter of the powers and the resources required to act on it. This term must probably, therefore, be taken to mean powers together with the functions they enable a local authority to exercise; in other words, functions must be combined with powers of action.

According to this interpretation, article 4.4 does not generally preclude the exercise of shared functions in respect of own powers.

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refers to "powers" in this context. "Powers" is therefore used here, in the broader sense mentioned at the end of the third paragraph of section I.A on definitions.

The second widespread classification is that which distinguishes between mandatory and voluntary powers (functions)*. It does not match the previous one: for instance, a mandatory power may be either an own power or a delegated one. A mandatory power or duty is a legal obligation on the local authority to which it is assigned, whereas a local authority is free to exercise or not a voluntary power assigned to it, or to exercise it to a greater or smaller extent. The main consequence of the distinction, however, is that mandatory powers demand more detailed regulations, while the law leaves local authorities more room for manoeuvre when it comes to the rules governing voluntary powers; there may even be no national rules, though this is doubtless very rare these days. A further distinction must be drawn among mandatory powers, between those for which there are established standards at national level, and which local authorities are required to exercise in fields in which it is considered especially important to ensure a degree of equality throughout the country (eg in education and health care), and the mandatory powers for which there are no national standards (eg household waste disposal); for the former, national standards obviously amount to a form of centralisation, since the intention is to prevent local self-government from resulting in inequalities that are unacceptable to society. In all countries there are functions that local authorities are required to perform, but not all countries' legislation and literature refer to this classification. It is mentioned frequently only in countries where central government policies are normally and traditionally exercised through local authorities (including the United Kingdom and Sweden), though this feature has declined in the United Kingdom since the early 1980s.

Table No. 2 sets out the different areas in which local authorities exercise their functions. For the purposes of this table, a function is considered to be conferred on a local authority when the latter exercises, either singly or in combination, purely managerial powers, a regulatory power or the power to take individual decisions affecting third party rights as any administrative authority does, whether the function is exercised as an own or delegated power, whether it is exercised as a mandatory or voluntary power and whether it is a shared function or not. Conversely, in line with the above interpretation of Article 4.4 of the Charter, participation, without decision-making or joint decision-making powers, in a procedure for the exercise by another authority

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* Translator's note: The translation of the French term "*compétences*" adopted in this report – "functions" – is unusable in this and a few other passages because standard English usage refers to "powers" in this context. "Powers" is therefore used here, in the broader sense mentioned at the end of the third paragraph of section I.A on definitions.

of the powers corresponding to the exercise of a given function is not regarded as meaning the exercise of a function. Lastly, in addition to the sectoral definition of powers and functions, the investment function is regarded here as a function because it is an area of activity particularly conducive to local government initiatives once a local authority has some latitude. In Italy, Law 350/2003 gives a legal definition of investment and lists the operations covered by this definition. In most European Union countries, a majority of public investments are made by local authorities; there are only ten exceptions (Austria, Cyprus, Estonia, Greece, Hungary, Lithuania, Luxembourg, Malta, the Czech Republic and Slovenia). The threshold adopted here highlights the countries in which this is a particularly distinctive feature of local functions.

Table No. 2 lists the functions or functional areas of responsibility identified in each country as representative of the role played by local authorities and as reflecting, through the observable combination of powers and functions, the features common to local authorities in all countries and the features differentiating between them from one country to another. It is not an exhaustive, consolidated presentation of all local authority functions; other important areas could be identified, even in some of the sectors selected in the table. The fact that a given functional area of responsibility is not associated with the local authorities of one of the sample countries does not mean that those authorities play no part whatsoever in that area, but that they are occasionally or minimally involved in it. The table covers only functions identified as representative and mentioned in the questionnaire.

Table No.2: Functions of municipalities and their groupings (local authorities)

Functions	*Germany*	*Spain*	*France*	*Hungary*	*Italy*	*Nether-lands*	*Portugal*	*United Kingdom*	*Sweden*	*Comments*
Investment expenditure > 60% of total public investment expenditure	X	X	X			X				The 60% threshold reflects a gap between the countries and distinguishes those in which local authorities commit the largest share of public investment. In Sweden: about 50%.
Police: - administrative policing - public safety	X	X	X		X	X X	X	X X		In Sweden municipalities are responsible for civil security. Other countries have municipal police forces with limited powers. In Hungary there is no local government power in relation to the police. The mayor has a power for civil security but this is a state power and not a local government power.

Functions	*Germany*	*Spain*	*France*	*Hungary*	*Italy*	*Nether-lands*	*Portugal*	*United Kingdom*	*Sweden*	*Comments*
Town planning: - planning - permits - spatial planning	 X X (partly) X	 X X X	 X X X	 X X X	 X X X	 X X X	 X X X	 X X X	 X X X	Municipalities in all the countries exercise comparable functions; what differentiates between them is supervision.
Housing: - direct or indirect management - benefits for families	X	X	X	X X			X	 X	X	The reforms carried out in recent years have deprived local authorities of traditional housing functions in the Netherlands and the United Kingdom.
Social welfare and social services	X (Kreis)	X	X	X	X	X	X	X	X	This function applies to all the countries, but varies widely in scope from one country to another.
Education - buildings /facilities - educational support -staff management	 X X	 X X	 X X	 X X X	 X X	 X X	 X X	 X X X (partly)	 X X X	Education has gradually been centralised in countries where it was traditionally a local authority function. Moreover, municipal responsibility often covers primary education only.

Functions	*Germany*	*Spain*	*France*	*Hungary*	*Italy*	*Nether lands*	*Portugal*	*United Kingdom*	*Sweden*	*Comments*
Public health: - hospitals - primary care	X (*Kreis*)			X			X			Where local authorities exercise a function, the cost of care is covered by the social security system.
Roads and public transport	X	X	X	X	X	X	X	X	X	This function is exercised only by urban authorities, co-operation bodies or the upper tier of local government.
Water	X	X	X	X	X	X	X		X	Function shared with the *wateringues* in the Netherlands; role of outside bodies, agencies and companies.
Electricity: Supply	X	X	X		X	X	X		X	This function is confined to networks, except in Germany and the Netherlands
Gas: supply	X	X	X		X	X			X	Idem
Economic development: grants to industry, real estate	_	X	X	_	X	X	X	X	_	In Hungary and Sweden economic development does not engender specific functions.

This table shows that in all the countries studied and probably also in all European countries, certain functions are performed by the municipalities or their groupings, sometimes together with their subdivisions (as with the *freguesias* in Portugal): the main town-planning functions (planning, land use permits, spatial planning operations), the award of social welfare benefits and the management of social institutions for particular sections of the population (especially the elderly), roads and public transport (depending on the size of the authority), the construction and maintenance of school buildings, now supplemented in all countries by educational support activities, and economic development, which is reflected in various activities even in countries where it is not listed among municipalities' statutory fields of responsibility. These functions may be regarded as the common core of municipal competence.

This core does not include certain functions that are often considered to be part of it: water supply, which is often (but not necessarily) associated with drainage and sewage, and low-cost housing. The former is not provided by local authorities in the United Kingdom, and municipal responsibility for low-cost housing has been substantially whittled down in several countries with reforms designed to introduce private management of low-cost housing and privatise housing stock. The United Kingdom is an exception with regard to water supply, however: a broader comparison shows that it is the only European country where local authorities do not perform this function.[12]

However, the core functions just identified vary in scope from one country to another. In the Netherlands, for example, municipalities' responsibility for social welfare extends to employment policy (management of benefits and implementation of the labour market reintegration programme), while in France this is the *départements*' responsibility; furthermore, not all countries have introduced a minimum income allowance. Responsibility for the construction and maintenance of school buildings is confined to primary schools in most countries, but extends to secondary schools in the Netherlands, Sweden and the United Kingdom in cases where local authorities have retained responsibility for it, and in Germany in towns and cities with county or *Land* status: unsurprisingly, these are countries featuring large municipalities.

Over and above this core and its country-based differences in content, the countries are differentiated according to the predominance of either economic

12. See chapter on "Europe", by G. Marcou (with the support of A. Campbell and H. Wollmann), in: UCLG (2007), First Global Report on Decentralization and Local Democracy, Barcelona, October 2007.

or social functions, but no homogeneous groups emerge. We might simply refer to *"competence profiles",* i.e. sets of functions distinguished by their subject matter, but which can be broader or less so, or in other words comprise a greater or smaller number of matters on which local authorities have the power to act by the legal and material means assigned to them. These competence profiles can be more or less characteristic of a country's local authorities or be superimposed on each other in the actual functions of a country's local authorities, which is increasingly often the case.

In several countries, municipalities are distinguished by the scope of the economic services they directly or indirectly operate or regulate, and by the scale of their investment function: Germany, Spain, France and the Netherlands. Italian, Portuguese and Swedish municipalities have similar competence profiles in these areas, but in Portugal municipalities have no responsibility for gas supply, while in Italy they have a less significant investment function.

In other countries, municipalities concentrate mainly on social and educational functions, especially in Hungary and Sweden; the same features apply to other Nordic countries, to which Hungary is similar in this respect. The distinctive functions here are management of teaching staff, broader responsibility for housing and a role in medical care provision. In Sweden the county council is responsible for medical care provision, but municipal responsibility has been extended in recent years by medicalising the social services provided to the elderly, which are a matter for the municipalities, and extending the latter's functions to the provision of nursing care to persons receiving home care services. Several other countries should be regarded as close to this profile: the Netherlands, where municipal functions have been cut back in education but increased in social welfare; and the United Kingdom, where functions in housing, education and social services were broader in the past, but have been cut back by reforms encouraging the return of certain activities to the market or reducing local authority control over the functions concerned.

In the appendix to the 2001 monitoring report on the state of local democracy in the Council of Europe member states,[13] a distinction was outlined between the countries in which local authority functions were dominated by services to individuals (social services, education, health care) and the countries in which they were dominated by domiciliary functions, ie by services associated with

13. CM/Monitor(2001)3 Add.rev., 6 April 2001.

the home and with technical infrastructure facilities. This distinction reappears in the competence profiles shown by the table, but it is more apparent here that the distinction is somewhat blurred; that is why this typology is now replaced by an approach based on competence profiles which can intermingle in the organisation of local authorities' actual functions in a given country. Social functions and an extension of educational activities have developed in the countries where functions seemed to be dominated by domiciliary services (especially Germany and France), while local authorities' traditional functions in the social and educational spheres have to some extent been eroded in countries where these appeared to be the more or less dominant local functions. Furthermore, European Union policies designed to open up services to competition result in a reduction of local authority functions in the areas concerned by these policies, at any rate where service operation is concerned.

Differences are apparent in a final sector, that of the police – which is here taken to mean firstly administrative policing, ie the power to make regulations or take individual measures to ensure public order, and secondly the function of public safety, which extends to responsibility for police forces and maintenance of material public order.

This is a particular feature of the Netherlands and the United Kingdom, though elected councils in the United Kingdom now exercise rather indirect responsibility and a recent reform in the Netherlands has just reinforced the role of the state and diminished that of the mayors. In France there is the opposite trend, starting from a situation in which state powers predominated: the role of municipalities is increasing in the area of public safety, with the growth of municipal police forces and the extension of their functions, and with the municipalities' participation in bodies based on partnership between central and local government in this area (local security contracts and local crime prevention councils, which include mayors and representatives of the police and prosecuting authorities). In other countries, municipal police forces remain secondary and auxiliary, but they are gaining in importance. In Sweden, on the other hand, municipal functions do not include the police. To sum up, it would seem that in general the responsibility of the state and the involvement of municipalities are both increasing in this area.

Lastly, it is preferable to deal with functions relating to town planning, spatial planning and environmental protection as a separate competence profile. They could be regarded as part of the "economic" competence profile because of their economic impact, but this would be misleading because it would mean

combining functions that essentially involve service provision to the population (either direct or under contract with private firms) with functions that are essentially regulatory, although there is a direct economic dimension to situations in which spatial planning results in local public investment. However, this profile is the least useful in terms of differentiation, since town planning, spatial planning and the environment are among the functions of municipalities and their groupings in all countries, with substantial variations as to the degree of autonomy with which they are exercised – but that is another issue, which will be addressed in the next paragraph.

We may thus propose to distinguish between four competences profiles whose content is summed up in the following table in terms of functions (including infrastructure construction and service operation or provision), irrespective of the capacity in which the authorities concerned exercise these functions and the degree of freedom with which they do so.

Table No. 3: Substantive content of competence profiles

Social profile	*Economic profile*	*Town-planning/ environment profile*	*Police/public order profile*
* Social welfare (provision of benefits or participation in the allocation procedure) * Establishment and management of social services (the elderly, infants etc) * Public health * Education * Culture and heritage * Leisure facilities and sport	* Domiciliary services (water, drainage and sewage, waste disposal and treatment, heating etc.) * Energy * Roads, public lighting * Public transport * Low-cost housing (construction and management) * Economic development measures	* Town planning * Other planning documents * Land use permits * Design and planning of housing areas * Design and planning of economic activity areas * Design, maintenance, protection and public access planning of green areas and natural areas	* Regulations aimed at maintaining material public order * Punitive and prosecuting powers * Management or direct participation in management of the police force * Firefighting and emergency services * Public hygiene (regulation and supervision)

The competence profile may be weak or strong, depending on the extent of the functions exercised. The social profile will be considered strong if the educational function extends to management of teaching staff and/or to several levels of education, and if the social welfare function extends to the provision of major services; it will be considered weak if competence is confined to school buildings, the running of social services, leisure facilities and cultural activities. The economic profile will be considered strong if municipalities and their groupings exercise functions relating to energy and low-cost housing (eg via low-cost housing bodies under their authority or supervision) and weak if they do not. The town-planning/environment profile will be considered strong if municipal functions extend to spatial planning and individual land use permits, and weak if they do not. Lastly, the police/public order profile will be considered strong if municipalities are responsible for public safety (maintenance and management of police forces responsible for public safety, or participation in those functions). Lastly, a competence profile may simply not exist, or the functions it covers may be so limited that it is preferable to ignore them in order to point up the essentials.

We can then compare local authority functions in the different countries by comparing the combinations of competence profiles and the directions in which they are moving. The trend may be towards expansion of a competence profile, if local authorities are acquiring new functions as part of this profile, or conversely towards a narrowing down of the profile if some functions are being lost or becoming shared; the trend may also be stable (without notable change). According to this method, the comments made on the sample countries may be summed up in the following table.

Table No. 4: Combinations of municipal (or intermunicipal) competence profiles by country

Country	*Social profile*		*Economic profile*		*Town-planning/ environment profile*		*Police/public order profile*	
	Importance	Trend	Importance	Trend	Importance	Trend	Importance	Trend
Germany	weak	<	strong	>	strong	--	0	--
Spain	weak	<	weak	--	strong	--	strong	--
France	weak	<	strong	<	strong	<	weak	<
Hungary	strong	<	weak	--	strong	--	0	--
Italy	weak	--	strong	--	strong	--	weak	--
Netherlands	strong	<	strong	--	strong	--	strong	>
Portugal	weak	<	strong	<	strong	<	strong	<
England	strong	>	weak	>	strong	--	strong	>
Sweden	strong	--	weak	<	strong	--	0	--

Key:
0: virtually non-existent function
<: expanding
>: narrowing down

The differences observed show that views on what can be devolved and what cannot are substantially conditioned by the history of each country's institutions, but the trends also show that municipalities and their groupings can acquire or lose functions.

We can thus produce a broad, simplified outline of the functions performed by municipalities and their groupings.

However, the countries are also differentiated according to the relationship between central government and local authorities in each of the fields analysed. These relationships determine the degree of freedom enjoyed by local authorities.

C) Method for analysing the degree of local self-government

The different countries can no longer be divided into types with distinctive features in terms of local powers and functions. The situation can vary considerably from one sector to another, within the same country, even though countries are distinguished by their institutions' clear preference for certain types of relationship and for the supervision exercised through them.

One way of reflecting this diversity is to describe the types of relationship, while the other is to start from the different sectors in which they operate in each country. However, attention has to be paid to the general forms of supervision exercised by central government and regional authorities. They have already been discussed in the first part of this report and at the beginning of this part; in this section they are linked up to other data as a means of assessing their scope. The discussion then focuses on the types of relationship encountered between the state (or the regional authority) and local authorities in a particular sector, by way of example, so as to pinpoint the combination of functions and powers specific to that sector in each country. The purpose here is methodological rather than analytical, so it does not involve drawing up a comprehensive table of these relationships.

1) General methods of supervision

Where general methods of supervision are concerned, the term "supervision" should be taken to mean both "scrutiny" and "control" (*contrôle* in French and *Steuerung* in German). Three points are discussed here: the relationship between sectoral supervision and general supervision of legality; the

relationship between own powers and delegated powers; and the relationship between competence profile and auditing of local finances by central government.

Sectoral supervision is most highly developed in two types of country: those in which general supervision of legality is weak or dispersed (no doubt precisely because sectoral supervision reduces its importance) and those in which municipalities have traditionally exercised broad service management functions, which normally means a strong social profile. In this last case the influence of this competence profile remains strong even where the corresponding functions have diminished. The obverse is also true: the transfer of new functions is not necessarily coupled with the introduction of sectoral supervision, particularly as this would be seen to run counter to the purpose of devolution. In France, however, the transfer of new cultural functions (eg concerning libraries, museums and heritage) to certain area-based authorities has gone and still goes hand in hand with the introduction of specific forms of technical and professional supervision.

Among the sample countries, sectoral supervision is most highly developed in the Netherlands, the United Kingdom and Sweden. It is provided for by the legislation whose application it is intended to ensure. Such is the case of inspectorates in those three countries, which incidentally do not specifically target local authorities: their task is to ensure that the law is applied, advise those who have to apply it and take, or propose to the minister, the requisite decisions where irregularities are found. This sectoral supervision is to be found more particularly in areas covered by mandatory powers. But where a duty is accompanied by the establishment of national standards, designed to ensure a degree of equality in the level of service provision to the population in fields considered essential, sectoral supervision extends to scrutiny of compliance with these standards. The setting of standards probably requires the introduction of sectoral supervision, and devolving the management of these functions should result in their expansion.

In the United Kingdom the best known supervisory body is the Planning Inspectorate, which examines appeals and can decide in place of the local authority if the latter's decision is contrary to the minister's "directions", which the local authority should have regarded as "relevant considerations". There are also inspectorates to monitor the benefits provided by local authorities (Benefit Fraud Inspection). In education, supervision is exercised by OFSTED (Office of Standards in Education), an independent body set up to

assess school performance, which also monitors the way in which local authorities meet their obligations in this area. The Audit Commission (England and Wales) (Audit Commission Act 1998), an independent public body, also assesses and marks the quality of local authority management; these assessments are publicised so that voters can make informed choices. Auditors appointed by the Audit Commission in each local authority monitor local authority operations and produce performance reports; they can also appeal to the courts against local authority decisions. In the event of a blatant breach of the obligations of a Best Value Authority (not only local authorities as such), they report to the local authority, which must take remedial measures, and if necessary to the Secretary of State, who can order measures. The government can give directions to the Audit Commission.[14] The October 2006 White Paper provides for reducing local authorities' reporting obligations and the number of performance indicators (from the current 1 200 to 200), and for reinforcing the role of the Audit Commission and the Government Offices of the Regions by comparison with specialist inspectorates (§ 6.33 and 6.49 ff.).

In Sweden, national legislation determines the framework for service provision at local level. National agencies help to implement the legislation by giving local authorities instructions. They also centralise the information supplied by local authorities, and they exercise supervision in a number of areas. The main agencies have county-level departments (for example in education). Nowadays, they set objectives and monitor the results: supervision is no longer confined to legality. This is particularly true in education. As a result, Swedish municipalities have greater freedom of management. This restraint stems primarily from the policy pursued, either in the agency's practice or as a result of the legislation, but it would be possible to bring back stricter supervision.

As a rule, the agency is empowered to decide how detailed its instructions will be; the Association of Swedish Municipalities demands that regulation should be the exclusive responsibility of parliament and the government. However, national agencies possess most of the administrative resources and sectoral expertise. Where irregularities are found, the investigative report includes criticisms and recommendations which are generally complied with. The agencies' involvement with local authorities has a statutory basis. The transparency of the criticisms and reprimands (reflecting the open manner in

14. Wide range of information and reports published on http://www.audit-commission.gov.uk

which the Swedish administration functions) and, where necessary, recourse to criminal law (which is extremely rare) ensure that this supervision is effective.

Sectoral supervision exists in the other countries, but the normal type of supervision appears to be monitoring of compliance with ordinary law. Town planning is the area in which substantial sectoral supervision occurs most frequently (particularly in Spain, Italy, Portugal and Hungary). In Italy the general system for scrutinising legality was abolished by the 2001 constitutional revision (except the power to act as a substitute and reference to the provisions of legislative decrees which must ensure that local authority measures comply with the law, the local authority's constitution and the regulations – see the above-mentioned La Loggia Law in Section I.B.6), but prior scrutiny of town plans by the regions (or the provinces, by delegation), which can address substantive issues, is maintained. Time will tell whether the abolition of general supervision and the effective transfer of administrative functions to the municipalities, except where it is necessary to designate another authority, result in the development of new forms of sectoral supervision. If the "basic levels of services relating to the civil and social rights that must be guaranteed throughout the country", which must be determined by national legislation under Article 117 of the Constitution since the 2001 revision, are indeed so determined, they should result in the introduction of sectoral supervision to ensure compliance with them.

The relationship between own and delegated powers is also relevant to supervision: one consequence of this distinction is more comprehensive supervision by the higher authority in the event of delegated powers, since they are exercised on behalf of the state (or sometimes the regional authority). It is accepted in this case that supervision will not be confined to legality, but can cover all the aspects of the measure in question. This situation arises in all the countries where legislation applies this distinction. It can be discussed from two points of view.

Firstly, delegated powers can be regarded as conducive to devolution, since in a sense they amount to a municipal takeover of state powers. But this argument is valid only with reference to powers and functions (functions combined with the powers for exercising them) which are thought to have to remain under state control (for example the issuing of various documents and permits), and this view is a very relative one (in France, for instance, planning permission is granted by the mayor on behalf of the municipality, if the latter is covered by a local town plan as is usually the case in urban areas, whereas in Germany

planning permission is granted on behalf of the state in comparable cases). On the other hand, if many powers are delegated they can mask a refusal to transfer powers and functions and can engender practices in relationships with higher authorities which may also adversely affect the exercise of local authorities' own powers. Here the outcome depends on many factors and assessment will have to derive from concrete analysis.

The institutional separation of local and central government, which reduces the number of delegated powers, can be conducive to clarifying the respective functions of the state and local authorities and to local self-government in matters in which local authorities have powers of their own.

Secondly, a comparison of delegated and mandatory powers is essential. Mandatory powers are always regulated and subject to more intensive supervision than voluntary powers, and they receive guaranteed funding. In practice they are not all that distinct from delegated powers in terms of the supervision exercised by the higher authority. But a difference arises when the power in question calls for management capacities relating to the provision of a service (for example education, once again), rather than being confined to measures reflecting the exercise of a non-discretionary power. These management capacities may then denote a certain degree of freedom for local authorities. The example of Sweden demonstrates that although mandatory powers are still regulated, municipalities now have greater latitude, since the 1991 law granted them the freedom to organise their service provision and since national agencies started to place the accent on objectives and assessment of results rather than on detailed regulation. The municipalities' management function then takes pride of place and their freedom derives primarily from their management capacity in the exercise of a mandatory power. This example shows that setting standards is not incompatible with a degree of local self-government and that the latter can on the contrary be an effective means of achieving them.

Do the categories of mandatory and delegated powers reflect different competence profiles? This does not seem to be proven. The concept of mandatory power is admittedly found in countries such as the Netherlands, the United Kingdom and Sweden where local authorities are assigned functions for which the state maintains political responsibility and ensures a degree of equality in service provision, because they are services to individuals (eg education, social welfare benefits) (even if the functions in question have lost some of their importance – we continue to analyse functions according to the

same grid). But the concept of mandatory power is also found in countries where local authorities have different combinations of competence profiles, such as Spain (1985 Law on the Basic Principles of Local Government), Germany (in the *Länder*'s legislation) and France, with cemeteries, water supply, drainage/sewage and other functions subject to mandatory expenditure.

Lastly, the same question can be asked with regard to the relationship between competence profiles and the supervision of local finance by central government. First of all, there is no correlation between significant local taxation and a particular combination of competence profiles. Countries with a high degree of fiscal autonomy (where own tax resources account for a large proportion of total resources) include both those where municipalities perform extensive management functions for services to individuals (strong social profile) (Sweden, Denmark and Norway) and those where municipal functions have developed on a residential basis (weak social profile; strong or weak economic profile) (Spain, France and Italy). Conversely, countries with a low degree of fiscal autonomy include both those where municipalities have a strong social profile (Hungary, Netherlands and United Kingdom) and those where they have a strong economic profile (Germany, Portugal).

A number of trends or features specific to certain countries can nevertheless be identified. In Sweden, for instance, where municipalities no doubt have the highest level of expenditure and fiscal autonomy in Europe, there is a highly distinctive division of labour: central government and the national agencies produce the regulations and set the objectives, while the municipalities and counties provide the funding through local taxation and equalisation grants. However, central government and the national agencies contribute to the funding of new tasks and delegated powers functions by means of special grants. Local authorities exercise considerable fiscal power and levy their resources through taxes as would the state; the law confers this power on them so that they may carry out the policies it introduces. But it is contrary to the commonly accepted principle that the allocation of new functions must be accompanied by additional resources. The alternative is therefore to transfer fiscal power, provided of course that the taxable item is sufficient to produce the necessary resources.

Moreover, although state transfers have gradually become more comprehensive in order to give each local authority receiving them greater freedom in terms of expenditure, earmarked grants are reappearing or continuing in many countries, under a variety of procedures. Firstly, some

countries have always retained a considerable number of ministerial grants for particular functions or policies. This is true of the Netherlands, Hungary and to a lesser extent Germany where the *Länder's* investment grants are concerned. In other countries specific grants or subsidies have reappeared or continued to exist, amounting to a comparatively small volume, but providing an incentive to local authorities to take part in a given programme or achieve a given objective. This is true of Sweden (127 different grants in 2001 according to a report of the *Statskontoret*) and to a lesser extent the United Kingdom. Local authorities sometimes support earmarked grants or subsidies because they view them as a means of securing certain types of funding. In the United Kingdom, where block grants are for local authorities to use as they see fit, all the parties concerned know the indicators on which the overall amount was based, and see to it that "their" share of total resources is maintained; but it is the improved results that restore some latitude.

Another way of earmarking resources is the programme contract. This is the name given to a contract concluded, as a rule, between the state (or the region) and a local authority to jointly frame an action programme involving funding by the parties concerned in order to carry out the planned operations. Examples include various contracts introduced in France under spatial planning policy and urban policy, such as conurbation contracts and town or city contracts, as well as the contracts concluded in Portugal between the state and municipalities to carry out operations jointly financed by the European structural funds. There are similar procedures in Italy and Spain, where they are provided for and regulated by law. In the Netherlands, contract procedures are also used to co-ordinate public activities and offer local authorities financial incentives to implement various national policies. In England, Local Area Agreements are being brought into general use and are to be given a statutory basis; they focus on four areas (children and youth; health and old people; safety; economic development); they will in future be funded by block grants (§ 5.49).

We may conclude that a study of municipalities' freedom of action in a given sector must take account of the way in which their powers and functions are funded, but also of the municipalities' position in the context of the relationships between the different tiers of government as imposed by the institutional framework.

2) Method for analysing sectoral relationships between the state (or regional authority) and local authorities

On the basis of the above, a function can be analysed for a given type of local authority, in several countries, on the basis of the following criteria:

1. Type of power:
    a) own or delegated
    b) mandatory or voluntary
    c) existence of standards or not
2. Exercise of a regulatory power concerning:
    a) rights
    b) organisation
    c) procedure
3. Individual administrative decisions:
    a) obligation to apply the law without exercising discretion
    b) exercise of discretionary power
4. Management:
    a) choice of the manner in which service provision is organised (eg direct public management, public corporation, public enterprise or recourse to the private sector); budget-based management or conversely industrial and commercial-type management
    b) freedom to allocate funds or not
5. Funding:
    a) block funding
    b) earmarked grants
6. Borrowing:
    a) free or subject to permission
    b) regulation of debt levels
7. Supervision
    a) confined to legality or substantive
    b) prior or subsequent
    c) general or sectoral
8. Existence of a contract procedure.

Thus, a local authority which exercises a given function assigned to it as an own power and which has regulatory power governing rights and the power to take individual decisions on a discretionary basis, and which is free to choose its type of management and allocate resources, is free to borrow subject to prudential rules and is only subject to subsequent review of legality, can be

considered as enjoying greater freedom in the field concerned than a local authority which, in another country for example, has regulatory power only over the organisation of its functions, is not free to choose how to organise its service provision, is obliged to conclude contracts and is subject to prior supervision. The first of these two local authorities has more chances of being able to frame and carry out a local policy than the second.

Of course, a comparison of this kind, which concerns local self-government, tells us nothing about the efficiency with which an authority fulfils the function concerned – that is another matter. The efficiency with which a function is performed depends on many other factors in addition to the degree of devolution affecting it.

The following table attempts, on the basis of the information collected, to apply this method to the local authorities of the sample countries. As regards town-planning functions, it takes account only of binding plans and land use permits. It does not cover the "borrowing" and "contracts" sections, since the former does not apply and the latter, although sometimes provided for by law (as in Germany under the federal framework law on spatial planning), has not been applied. The table does not include the management section either, as it is not relevant here.

Other tables can be drawn up on other functions.

Table No. 5: Local self-government in terms of local town-planning powers and functions

Functions and indicators	*Germany*		*Spain*		*France*		*Hungary*		*Italy*		*Netherlands*		*Portugal*		*England*		*Sweden*		*Comments*
	Plans	Permits	Plans	Permits	Plans	Permits	Plans	Permits	Plans	Permits	Plans	Permits	Plans	Permits	Plans	Permits	Plans	Permits	
Power *own *delegated *mandatory *voluntary	X X	 X X 	X X 	X X 	X X	X X 	X X 	 X X	X X 	X X 	X X 	X X 	X X 	X X 	 X 	 X 	 X 	 X 	Germany, Spain, Italy, Netherlands: planning hierarchy with regional plans
Regulatory power *rights *organisation *procedure	X 	 	X 	 	X 	 	X 	 	X 	 	X 	 	X 	 	 X X	 	X 	 	
Permits: *no discretionary power *discretionary power	 	X 	 	X 	 	X 	 	X 	 	X 	 	X 	 	X 	 	 X	 	X 	

Funding: *block *earmarked grants	X		X		X		X		X		X		X		X X		X		In some countries a fee is paid for the issue of permits. This is distinct from the financial participation of developers or owners
Supervision: *legality *substantive *prior *subsequent *general *sectoral	X X X	X X X X	X X X X	X X X	X X X	X X X	X X X	X X X X	X X X X	X X X	X X X 2007 X 2008 X	X X X	X X X X	X X 	X X X X X	X X X X X	X X X	X X X	Supervision may be combined with the state's or region's involvement or participation in the preparation of the plan, or with a power over permits

A table of this kind presupposes many simplifications and cannot provide a dynamic overview of powers and functions. It requires us to concentrate on functional areas of responsibility which involve significant combinations of the subject matter of the function and of the powers relating to it. Nevertheless, a number of conclusions can already be drawn from the suggested example.

Drawing up town plans is a voluntary own power in all the sample countries except England and Sweden, where it is a mandatory power – which no doubt explains why municipalities or local authorities are very large in size in the two latter countries; this will also be the case in the Netherlands (where a "land control regulation" – *beheersverordening* – may however be adopted instead) when the Spatial Planning Law of 20 October 2006 comes into force. On the other hand, granting planning permission is a mandatory power and a non-discretionary power in all countries except England, where it is a discretionary power (on account of the requirements to which the local authority may subject the granting of planning permission); it is a delegated power in Germany, which enables the higher administrative authority of the *Land* to exercise substantive supervision.

Plans have regulatory force in all countries except England, where the local authority (partially) regulates only the organisation and procedure for drawing up plans. The funding of planning takes the form of an earmarked grant in only three countries: Hungary, the Netherlands and England.

As regards supervision, town plans are subject to substantive supervision in most of the sample countries, and only to scrutiny of legality in Germany, France, Hungary and Sweden, and in the Netherlands when the law of 20 October 2006 comes into force; this supervision is exercised only subsequently in France, Hungary and Sweden; and sectoral supervision is added to it in all countries except Germany, France and Hungary. Supervision of the granting of planning permission is subject to subsequent review of legality in only countries: Spain, France, Italy, the Netherlands, Portugal and Sweden; however, it is exercised by a sectoral authority in Italy and the Netherlands.

Cross-consideration of all this information leads to the conclusion that town planning is most highly devolved in France and Sweden and most centralised in England. In France, town plans are a voluntary own power, with regulatory force, subject only to subsequent review of legality; planning permission entails the exercise of a non-discretionary power, which is a mandatory own

power (if there is a local town plan), subject only to subsequent review of legality. In Sweden, planning is a mandatory power, but the other indicators are the same as in France. In England, the local authority exercises a mandatory power, but has considerable discretion in granting planning permission; town plans and planning permission are subject to prior substantive scrutiny by the Planning Inspectorate, a ministerial department; the minister is even empowered to take the decision in place of the local authority if the need to enforce the planning policy guidances he or she has established so warrants.

Several countries are in an intermediate situation: the granting of planning permission is devolved in Spain, Italy, the Netherlands and Portugal, but plans are subject to prior substantive scrutiny by the higher authority – the region in Italy and Spain, the province in the Netherlands (only under the current system, until the law of 20 October 2006 comes into force) and the state in Portugal.

But in the Netherlands, as of the entry into force of the law of 20 October 2006 (at the end of 2007, on a so far unspecified date), the state and the province will be empowered to require municipal town plans to comply with the rules governing provincial or national schemes, particularly through the publication of an integration plan (*impassingsplan*); until the municipal plan is brought into line with these rules, the legality of planning permission will have to be assessed on the basis of the national or provincial rules. In Germany, plans are subject to scrutiny of legality, but this includes checking whether they comply with the objectives set by the regional plan where there is one, and as already noted, planning permission is granted on behalf of the state (the *Land*). Of course, this does not mean that town-planning legislation is superior in France or Sweden, or indeed that town planning is of better quality in those two countries than in the others. The various countries can nevertheless be positioned in relation to each other in terms of the way in which powers in this particular functional area of responsibility are shared out between the different levels of government.

There is nothing to suggest that the sample countries would be distributed along the same lines in another functional area of responsibility. In education, for example, France would obviously appear much more centralised than England and Sweden, which would be the countries with the highest degree of devolution in this area.

This differentiation is largely the outcome of history. However, a second step might be to query its scope in terms of public policy in each country. This might shed light on the choices between a greater or lesser degree of devolution in the production and management of each major function.

Conclusion

Local powers are generally, and quite rightly, considered to determine the real meaning and scope of local self-government. Unfortunately, the concept of power is ambivalent and there are countless ways of describing the functions which are the subject matter of local powers. The most widespread approach to powers, which distinguishes between the various areas in which local authorities act, provides only very superficial information: it says nothing of the actual scope of the power in question, since the functional area of responsibility is normally much wider than the function which is the subject matter of the power described; nor does it say anything of the powers through which the local function in question is exercised, nor of the degree of freedom or discretion surrounding those powers, nor of the type of supervision to which local authorities are subject. Powers are often shared, so that it is impossible to ascertain, on the basis of such descriptions, what exact role local authorities really perform.

This report offers a more comprehensive but also much more complex approach to powers and functions. The idea, for each functional area of responsibility, is to correlate the subject matter of the power, i.e. the sphere of action, on the one hand and the resources that the local authority can bring into play in order to act on the other. This means both legal powers and financial resources. Account must also be taken of the framework for action, i.e. the higher authorities and their relations with local authorities. Preference is also given to a sectoral approach, since a purely institutional approach is misleading.

A close look at a country's system of local government immediately shows that the situation can differ markedly from one sector to another; and the most highly devolved or highly centralised sectors vary from one country to another. This makes the picture more accurate, but unfortunately also less readable. To make the study easier to understand, however, three types of simplification can legitimately be used. The first stems from the fact that while there are countless ways of grouping or distinguishing functions, the range of resources available to local authorities is finite, as is the range of factors determining their framework for action. The second is connected with the objective pursued: the purpose of the study is not to produce an exhaustive description of what local authorities do or can do in a given country, but to understand their role in the light of their relations with central or regional government. This does not call for a highly detailed description; it is enough to select, in various functional areas of responsibility, the functions for which one can expect to find the most significant variations. Lastly, the third simplification involves disregarding cases in which local authorities have powers in a given area which are in practice minor and therefore not typical of the local authorities concerned. This highlights the major features more effectively and makes international comparisons more meaningful.

A study of this kind can lead to a diagnosis of local powers and functions in a given country, in terms of the main areas concerned and the degree of local self-government in the exercise of those powers and functions. The concept of competence profile suggested in the report serves to group functions on a functional basis. This makes it possible to identify the dominant competence profiles in local authorities' actual powers and functions, and the scope of the powers and functions actually exercised in each competence profile, and to determine whether or not these powers and functions are expanding or increasing. An international comparison then makes it clear that the combination of competence profiles varies from one system of local government to another and evolves in each country over time, sometimes substantially, as a result of reforms aimed at greater devolution or sectoral reforms which may, as the case may be, lead to centralisation or devolution of the sector concerned.

Despite these simplifications, the proposed method inevitably generates a more complex and therefore less readable picture than the traditional approach to local powers and functions. On the other hand, it provides a greater wealth of information and enables a diagnosis to be made of the role of local self-government in a given country, bearing sectoral differences in mind.

Whether this effort is justified or not depends on the objectives one sets oneself.

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Appendix

The countries studied

A brief description will be given here of the various countries in the sample studied, pointing to the features relevant to an analysis of powers. This is the reason for the occasional simplifications resorted to. The presentation of each country will focus on local authority powers, avoiding a review of the basic data which can easily be found elsewhere and is fairly well known (area, population, data on size of local authorities, etc…). Powers and resources will be presented separately from functions so as to pinpoint some significant features of the system which condition the scope of local government functions. However, it must be borne in mind that powers may vary according to sector of activity: attention will be drawn to this in cases of particular importance.

I. Germany

The German system of local government is in fact a two-tier one, based on the municipality and the county (*Kreis*); the largest cities lie outside the remit of the county and assume all the local powers and those delegated by the state to the county authority. By way of exception, three cities have the status of *Land* and accordingly enjoy special autonomy (Berlin, Bremen, which in fact comprises two municipalities, and Hamburg). Despite minor differences in the *Länder*'s legislation, the county is both a local authority and a grouping of municipalities. One of the links between the county and the municipalities is the fact that the county's resources largely derive from the municipalities' contributions, which it votes on the basis of the expenditure to be met; the remainder come from financial compensation for the state powers delegated to the county government, from other state grants and from charges and dues paid by the citizens. Other forms of municipal groupings cover functional territorial areas.

1) Powers and resources

Municipal organisation, like all area-based administrative organisation in fact, is a matter for the *Länder*, subject to observance of the right to self-government (*Selbstverwaltung*) conferred on local authorities by Article 28 of the Basic Law; the same is true of local finance, subject to the provisions of Article 106 of the Basic Law.

This right includes the power to make regulations (*Satzung*) required for the exercise of powers. In matters in which local authorities have their own powers, the supervision exercised by the *Land* government is confined to supervising the legality of local authority measures; supervisory measures are subject to review by the administrative courts. Spatial planning "requirements" are binding on municipal town-planning documents and in particular, the provisions designated as "objectives" are legally binding. However, where measures taken on behalf of the state are concerned, scrutiny by the higher authority also covers the expediency of the decisions taken.

Local self-government (*Selbstverwaltung*) is traditionally taken to mean the municipality's powers to regulate its finances (*Finanzhoheit*), manage its staff (*Personalhoheit*) and carry out its own spatial planning (*Planungshoheit)*.

However, municipalities exercise these powers of self-government within a regulatory framework established by the federal parliament and especially the *Land*.

Although the Basic Law guarantees municipalities' tax revenue (Art 106) in the form of the right to a share of income tax yield and, since 1998, to a share of VAT yield, they are granted fiscal power – in the form of the power to determine the tax rate – only with regard to land tax and trade tax (*Gewerbesteuer*). Under Article 106.6 they are entitled to determine the rate of the municipal share of income tax, but this power has never been implemented, whereas *Land* and federal deductions from the trade tax yield have steadily increased, so that the municipalities' share now amounts to only about 30% of this yield.

In the final analysis, municipalities' fiscal power concerns less than 18% of their total resources. There are also minor local taxes which vary from one *Land* to another.

Local authorities account for a substantial proportion (almost 58%) of public investment expenditure.

In the area of municipal employment, municipalities' powers are determined by the rules governing civil servants – which the constitutional revision of 28 August 2006 incorporated into the Länder's remit as regards Länder and local authority officials – and by national collective agreements as regards staff without permanent civil servant status, who are fewer in number in local government. In the area of spatial planning, municipalities exercise their powers as part of the *Land*'s planning, particularly the regional plan where there is one, while planning permission is granted on behalf of the state.

The federal government has virtually no field departments, but the governments of the largest *Länder* maintain such departments in their administrative districts (*Regierungsbezirke*) for the exercise of their own powers; some *Länder* have abolished them.

2) Functions

In terms of functions, the German system of local government is traditionally described as follows:

- municipalities have universal competence to deal with matters of local interest, subject to county functions with regard to municipalities included in the territory of a county;
- the most important among municipalities' own powers (functions) are regulated by federal law (eg town-planning regulations) or by *Land* law (eg school affairs), which regulates local authority functions on the basis of the distribution of legislative powers between the Federation and the *Länder* established by the Basic Law;
- municipal functions assigned to a county can only be those that municipalities themselves cannot exercise;
- the *Land* delegates a wide range of state administrative functions to counties and to municipalities with county status;
- functions are exercised directly by the municipal authority, or delegated to enterprises of its own or, more recently, to companies whose capital is in the hands of the municipality, which is free to choose the type of management: this applies both to economic services (gas and electricity production, distribution and supply; water supply and drainage/sewage; waste collection and disposal; public transport) and to social services. In the public interest, the local authority can make it compulsory to use municipal services, at the rate it determines.

The constitutional revision of 28 August 2006 reinforces the federal parliament but prohibits it from assigning new functions to municipalities and groupings of municipalities (new Article 84.1, last sentence, of the Basic Law).

Constitutional case-law refers to history and experience in holding that a service is part of municipal functions; these are the functions whose performance is essential to the life of the local community. This case-law also considers that there is a core of own powers without which local self-government would cease to exist, but it does not define this core in advance. Lastly, local self-government presupposes a discretionary power in this area which legislation cannot remove.

The main change to the German system of local government in recent years is no doubt opening up to competition under the impact of the building of the Single Market and the New Public Management approach, which was taken over and adapted to the German context under the name of "*Neues Steuerungsmodell*" (new management model) in the 1990s. This approach favours outsourcing various functions to public or private enterprises outside

the local authority. The financial constraints affecting local authorities as a result of Germany's reunification have lent further weight to this trend. It is estimated that by the early 21st century more than half of municipal activities and their funding had been outsourced; as a result of this movement, local authority numbers dropped by 22% in ten years (1991-2001) in the older *Länder*.

While this trend does not undermine local authorities' power to organise, it does call into question their traditional function as direct or indirect providers of services to the population on the basis of an approach centred on the local public interest.

II. Spain

Local self-government has been guaranteed by the Constitution since 1978. This guarantee protects both municipalities and provinces (Art 137), which are defined as local authorities formed by grouping municipalities and operating the territorial divisions required for the performance of state functions. The autonomous communities may set up other groupings of municipalities, and municipalities are entitled to form associations.

The reform of the 1985 Law on the Basic Principles of Local Government is designed to give municipalities greater autonomy and afford this autonomy more effective legal protection, and to bring the municipalities' autonomous status a little closer to that of the autonomous communities within the state.

1) Powers and resources

Municipalities have statutory powers to make regulations, levy taxes, adopt their budgets, draw up plans and programmes and make use of expropriation, and they have their own staff.

They can manage local public services either directly or indirectly; only direct management is allowed where services involve the exercise of authority. Indirect management means bringing a private entity into play: a concession, an incentive management scheme, a "*concierto*" (contract used in the educational and social spheres), a lease or a semi-public corporation (section 85). Local authorities can also take public initiatives in the economic sphere as authorised by Article 128.2 of the Constitution (section 86), but this is now subject to compliance with Community law. In practice, the private sector provides a substantial proportion of local public services.

Municipalities exercise town-planning powers under the supervision of the autonomous community administration (power of approval). There are other forms of supervision deriving from sectoral legislation.

General supervision of legality takes the form of subsequent review by the administrative courts, to which cases may be referred by the state administrative authorities or, more usually, by those of the autonomous community.

The autonomous community administration sets up its field departments at provincial level on a sectoral basis, and sometimes at district level.

Own tax resources account for almost 48% of local authorities' total resources.

Local authorities commit two thirds of total public investment expenditure.

A revision of the basic principles of local government has been under way in Spain for several years. In 1999 the legal safeguards surrounding local self-government were reinforced with the introduction of a procedure for bringing cases before the Constitutional Court.

Municipalities are demanding greater devolution at regional level because the rapid rise of the autonomous communities since the 1980s has been of little benefit to them. In 1999 it was proposed that local agreements be concluded to transfer some autonomous community functions to the municipalities, but little was done about it. The 2003 reform strengthened the administrative structure of the largest cities. The Spanish Government's January 2005 white paper proposes a more comprehensive revision of the Law on the Basic Principles of Local Government in order to promote the extension of local authority functions, whether at municipal level or via the provinces, as well as their guarantees of autonomy in relation to sectoral legislation. A preliminary draft law has been drawn up and will be discussed by parliament in 2007.

2) Functions

The current system of local government functions is based on Law 7/1985 of 2 April on the Basic Principles of Local Government. Section 2 refers to the sectoral legislation of the state and the autonomous communities for provisions regulating functions; this section itself determines only the subject matter of those functions. As a result, given the transfer of functions to the autonomous communities, the latter now handle most of the sectoral legislation regulating local government functions. The Constitutional Court held that the national parliament could not determine the content of local functions in detail because the autonomous communities must retain a certain freedom of choice, "since local authority functions were ultimately shaped by the corresponding sectoral legislation" (STC 214/1989, FJ3º).

However, Law 7/1985 provides for the subject matter of local authority functions as follows.

Although the general competence clause in respect of municipalities can be inferred from the terms of sections 25.1 and 28 and the second transitional provision of Law 7/1985, these provisions are considered vague and the preliminary draft law on the basic principles of local government states the principle clearly (section 21).

The 1985 law distinguishes between functions (*competencias*) (sections 25-28) and powers (*potestades*) (section 4), which are the legal instruments that local authorities can use in exercising their functions.

It lists the matters in which municipalities exercise the functions assigned to them by regional legislation (section 25).

It lists the services that municipalities must provide to the population, distinguishing between those which are compulsory in all municipalities and those which are compulsory depending on the demographic category into which the municipality falls (more than 5,000, more than 20,000 or more than 50,000 inhabitants) (section 26).

The state, the autonomous community and other local authorities may, under their direction and supervision, delegate to municipalities the exercise of functions in matters affecting their own interests (Section 27). Provinces and, where appropriate, districts (*comarcas* – established in some autonomous communities) exercise the functions conferred on them by state or regional legislation and perform a supplementary or support function in relation to municipalities (sections 36 and 37).

III. France

Under the terms of the Constitution, municipalities, *départements* and regions are territorial authorities of the same legal nature. However, three quarters of local public expenditure are committed by the municipalities and groupings of municipalities with their own tax resources, which now cover more than 52 million inhabitants (out of 62 million) and 32 311 municipalities out of about 36 700 (including the overseas *départements*) and in fact form the second tier of local government.

1) Powers and resources

The constitutional revision of 28 March 2003 strengthened the constitutional safeguards surrounding local self-government and incorporated the regions into the Constitution. In particular, the principle of financial autonomy was included in the Constitution and, on the basis of these provisions and the institutional law of 29 July 2004, the Constitutional Council ensures that the share of own resources in the overall resources of each category of local authority does not decrease; however, shares of national tax yields are now regarded as own resources.

To enable them to exercise their functions, local authorities have the power to make regulations, which was established by the 2003 constitutional revision, the power to levy taxes and the freedom to recruit the necessary staff under the statutory provisions applying to the territorial civil service.

State supervision of local authorities takes the form of subsequent review of legality by the administrative courts, to which the *préfet* of a *département* may refer cases for the purpose.

In 2004 revenue from own taxation still accounted for 48.5% of resources, despite the reforms that have reduced local and regional authorities' fiscal powers since 1998. These authorities commit more than 70% of public investment expenditure.

The devolution policy (*décentralisation*) pursued since the early 1980s has been followed by a decentralisation policy (*déconcentration*). The exercise of state powers at local level is normally a matter for ministry field departments and national public institutions. That is why fewer powers are delegated to local and regional authorities in France than in other European countries. But

as various policies demand co-operation from local and regional authorities, given their functions and resources, the state administrative authorities had to be entitled to take decisions themselves, on the spot, on matters within the competence of the state. The decentralisation policy involves delegating ministers' decision-making powers in many areas to the *préfets* of *départements* and regions and strengthening the *préfets*' authority over government departments in their districts; however, some departments are excluded, at least with regard to some of their tasks (eg education, Finance Ministry services, Labour Inspectorate). The devolution policy has resulted in a reduction of the state's own departments (decentralised departments) at *département* and regional level, since the transfer of functions must go hand in hand with the transfer of the departments and officials in charge of them; it therefore leads to reorganisation of those departments. However, the 2003 constitutional revision also established a constitutional basis for decentralisation (Art 72, last para.).

The devolution policy was coupled with the development of contractual policies, ie agreements in the form of contracts between the state and local or regional authorities to implement various sectoral policies and finance public investment. This contractual co-operation mainly takes the form of state-region planning contracts. Local development and spatial planning policies are framed under conurbation contracts (*contrats d'agglomération*) and area contracts (*contrats de pays*) (project areas with a framework for co-operation between municipalities), which are drawn up under the state-region planning contract. Many sectoral laws provide for agreements or contracts between the state and local or regional authorities, for example in housing matters. Several reports on contractual policy were drawn up in 2003, 2004 and 2005, all in favour of maintaining state-region planning contracts, which it was therefore decided to keep, but also proposing a reform. As of 2007, planning contracts will be replaced by project contracts between the state and the regions: the available resources will mean a greater focus on priorities; fewer programmes will be covered by contracts, which should make it easier to comply with commitments.

2) Functions

All French local and regional authorities have general competence, but it should be borne in mind that groupings of municipalities with their own taxation are not local authorities and remain subject to the speciality principle:

they can only exercise the functions conferred on them by law or delegated to them by the member municipalities.

However, most local and regional authority functions derive from special legislation which lays down the relevant rules. Some of them, which came under the legislation on the organisation of local government, are still in the current General Code of Territorial Authorities (such as the provisions on water supply, drainage/sewage, waste, markets, gas and electricity supply and tourist offices). But many other functions are determined and regulated by other codes, since codification has been on the increase in recent years (eg town planning code, construction and housing code, environment code, heritage code, education code).

The devolution policies pursued over the past few decades, particularly the reforms of 1982-1986 and 2003-2005, have speeded up this trend, since the devolution legislation transferring new functions from the state to local authorities leads to reforms of sectoral legislation to adapt the content to the intention of giving local and regional authorities their own powers in these areas. At the same time this legislation has provided for the transfer of the necessary financial resources and staff for the exercise of these new functions.

Other legislative measures have been of equal importance to local authorities: in 1982 they were granted a power of initiative for the purposes of economic development and support for firms in difficulty; in 2004 the regions' power of initiative was strengthened, though other territorial authorities and their groupings can only take part in this (but they can take initiatives of their own in support of industrial premises); local authorities are now entitled to act as electronic communications network or service operators, under the law of 21 June 2004; and lastly social reforms have been introduced on assistance to the elderly (the "personal autonomy allowance") and to people with disabilities.

In budgetary terms the main beneficiaries of the transfers have been the *départements*, in 2004 as in 1983-1986 (in 2004 the *départements*' expenditure was to increase by 18.7% as against 5.3% for municipalities and 7.6% for the regions). In economic terms, however, the role of the regions has grown and should grow still further with the transfer of economic development infrastructure facilities (airports and ports of regional importance, if the regions so request), after the transfer of regional rail passenger transport. For municipalities, the devolution of town planning has undoubtedly been the major change: all regulatory town-planning documents are now a matter for

the municipalities or groupings of municipalities, except regional documents specific to certain regions (Ile-de-France, Corsica and overseas *départements*) and spatial planning directives and operations of national interest, which are the responsibility of the state, for certain areas.

Local and regional authorities are traditionally free to choose the way in which they manage their public services. This freedom has operated in favour of the private sector, particularly with the use of concession contracts and more generally public service delegation contracts: water supply, drainage/sewage, waste collection and disposal and public transport are usually operated by private firms.

Local and regional authorities, and some local institutions including the mayor, exercise a number of administrative functions on behalf of the state. However, fewer such functions have so far been delegated in France than in the neighbouring countries, since the state has retained substantial executive machinery at local level (including *préfectures, sous-préfectures*, the education system and the Ministry of Finance), which draws a fairly clear distinction between matters dealt with by the state and matters dealt with by local and regional authorities. The law of 13 August 2004 deviates somewhat from this model insofar as it again provides for the transfer of a number of functions in delegated form (on an experimental basis: award of state grants to enterprises under certain conditions, and award of housing grants by groupings of municipalities with a local housing programme).

IV. Hungary

Local government is based on two tiers, the municipality (*települési*) (local level) and the county (*megyei*) ("territorial" level according to statute), but there are three categories of local authority: municipalities, cities with county status (which number 22) and the capital Budapest, which has special status.

1) Powers and resources

Local self-government is protected by the Constitution and by the Law on Local Self-Government, which can be adopted or amended only by a two-thirds majority of the parliamentarians present; and the same applies to any legislation restricting the rights associated with local self-government (Constitution, Art 44.c). The voters in each local authority are the holders of these rights (Art 44). The system of local self-government is established by Law LXV/1990, whose Chapter 7 lays down the special rules applying to the capital city.

A law of November 2004 (which came into force on 1 December 2004) promotes the grouping of municipalities into micro-regions – initially designed for the purposes of local development policy – for the exercise of certain powers. As it is not possible to obtain a two-thirds majority to make this grouping process mandatory, it takes place on a voluntary basis with financial incentives from the government. There are 174 micro-regions for intermunicipal co-operation (including Budapest); by November 2007, 171 groupings of municipalities had been set up, 170 of them combining all the municipalities in the micro-region.

The county was also the seat of the public administration office (*megyei közigazgatási hivatal*), a state body which came under the authority of the Ministry of the Interior and was responsible in particular for co-ordinating the work of the ministries' decentralised departments.

From the 1st January 2007 the regional public administration offices exist on the basis of the 7 statistical planning regions under the authority of the Ministry of Local Governemtns and Territorial Development (the Ministry of Interior as such was abolished in 2006). These offices are the territorial bodies of government with general competence. Their centres are in the county centre towns. Administration offices – except the Central Hungarian Region including Budapest - have their branch offices in the counties without legal

sovereignty. The work of the regional head of office is supported by deputy head of offices. The branch offices are directed by their heads, who are deputy heads of office.

The regional head of the office (hivatal*vezetö* – comparable to a *préfet*) reviews the legality of local authority measures, which may entail referring the measure in question to the Constitutional Court (standard-setting measures) or to the ordinary courts, as the case may be, or instigating a scrutiny of financial management by the Audit Court.

Local authorities comprise three main institutions: the council, the executive (the mayor or *polgármester* is elected by direct suffrage and the president of the county by the county council) and the head of the local administration or "notary" (*jegyzö*). The latter is an official appointed by the local council on the basis of a competitive examination and for an indefinite term; he or she is also dismissed from office by the council in the event of unsatisfactory performance. There may be a district notary covering several small municipalities in order to reduce costs. The notary is traditionally responsible for preparing and implementing the decisions of the elected bodies and for exercising administrative functions on behalf of the state at local level. Although amendments to the Law on Local Self-Government have reinforced the mayor's authority over the local administration and given him or her general competence in this area (Law LXV/1990: Section 35.2, b), the notary usually appears to retain broad responsibility for administrative orders (*hatóság*). The procedure for the adoption of such orders and appeal against them is regulated by the Law on Administrative Procedure (the amended 1957 law was replaced by a new one on 1 November 2005) or by special legislation.

Lastly, since 1996, regional development councils (*területfejlesztési tanács*) have been set up at county level, then in seven regions (except Budapest). They are state bodies with legal personality and a budget which they must balance, but their membership and mode of operation make them a combination of state and local government body. They are in charge of spatial planning and manage investment funds, including those from the European Union (French says d'origine européenne). They amount to a form of regionalisation. However, the position of the regions in the administrative system remains a controversial issue.

In order to exercise their functions, local authorities have a budget, their staff and the power to adopt standard-setting instruments in the form of decrees

(*rendelet*); these are distinct both from decisions (*határozat*), which are administrative acts, and from parliamentary laws (*törvény*). Decrees may be adopted to deal with local matters not covered by law and in those cases where the law provides for implementing decrees. Local authority decrees must be adopted by the local council.

In financial terms, local public expenditure accounts for 12.7% of GDP and 23% of total public expenditure. Municipalities are free to levy the statutory local taxes or not, within the limits of the statutory rates; local taxation accounts for about 13% of local authority resources, while 85% derive from business tax. Local authorities commit about 33% of public investment expenditure. Investment grants are earmarked.

2) Functions

Functions are shared out on the following basis: where local authority functions are concerned, a distinction is drawn between mandatory and voluntary powers (functions);* among the former, a further distinction is drawn between those which must be exercised in all municipalities and those which are conferred by law on local authorities meeting certain criteria. Local authority functions are normally exercised by municipalities; counties exercise the mandatory local powers which exceed the municipality's capacity or are assigned to the county by law, together with powers involving official authority exercised on behalf of the state.

The mandatory powers (functions) to be exercised in all municipalities are: drinking water supply, nursery and primary education, local health care services and social services, local road maintenance and cemeteries, and respect for the rights of ethnic and national minorities.

The municipality is responsible for planning in terms of urban development and construction, and planning permission is granted by the notary. The regional architects' office exercises technical supervision, as do other authorities on specific points. However, only the scrutiny of legality conducted by the head of the public administration office results in compulsory changes to the plan if it is unlawful in any way.

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* Translator's note: The translation of the French term "*compétences*" adopted in this report – "functions" – is unusable in this and a few other passages because standard English usage refers to "powers" in this context. "Powers" is therefore used here, in the broader sense mentioned at the end of the third paragraph of section I.A on definitions.

The key role in the area of housing and low-cost housing belongs to the Ministry of Local Governments and Territorial Development as the National Housing and Construction Office became part to the Ministry. However, the municipalities manage housing stock and ensure access to housing for those whose income level warrants implementing the guarantee of a right to housing.

In social matters local authorities exercise own powers (functions) and delegated powers (functions). Many individual decisions are taken by the notaries, on the basis of the legislation establishing the beneficiaries and benefits, and are entirely funded by the state, but under the responsibility of different ministries (eg child welfare, allowances for the elderly, unemployment benefit, permanent social assistance, reserved housing and temporary assistance). Local authorities also manage compulsory social services for which they receive state grants on the basis of indicators; however, these grants do not cover all the expenses (eg care homes, home care, transport in sparsely populated areas, provision for families in crisis, measures for the homeless in towns with a population of more than 50,000). Local authorities can adopt additional regulations.

They are responsible for school management under state supervision. Municipalities run primary and nursery schools, while counties run secondary and special schools; however, some municipalities may take on the management of secondary schools or delegate that of primary and nursery schools to the county. Local authority functions cover the running of schools, school premises, the management and remuneration of teaching and other staff, the setting up and abolition of schools and school budgets. The National Centre for the Assessment of Public Education, which comes under the Ministry of Education and has seven regional directorates, approves the action plans and curricula.

A similar system operates with regard to health care. Local authorities are in charge of the functioning of health-care establishments, on the basis of funding provided by social security in the form of earmarked grants, and are also in charge of these establishments' facilities, equipment and maintenance. A national agency with departments in the cities and counties ensures compliance with standards.

Local authorities determine and organise public transport rates, but the transport inspectorate has to authorise the building of roads and the siting of pedestrian crossings and public transport stops.

Local authorities set the price of water and drainage/sewage services, but boring and networks are subject to permits issued by the 12 water boards, which are the field departments of the Directorate General for National Water Management. This body is responsible for applying the legislation on water resource protection and for supervising public water supply service operators.

Local authorities have no responsibility for gas or electricity supply, but determine urban heating rates where such installations have been authorised.

V. Italy

The situation in Italy is rendered more complex by the as yet uncertain consequences of the constitutional revision of 18 October 2001. Another draft constitutional reform, passed by both houses of parliament, was rejected by a substantial majority in the referendum of 25 and 26 June 2006 (61.3% against). As things stand, the constitutional revision of 2001 has made Italy a country with autonomous regions inclined towards federalism, while some of the Italian literature refers to a "republic of autonomous authorities".

It is still impossible to tell what balance will be struck between state, regional and local authority powers as a result of these reforms. However, the changes affecting local authorities will probably be less radical than those affecting relations between the state and the regions.

1) Powers and resources

Italy's system of local and regional government is still based on three tiers: the regions, the provinces and the municipalities. But the regions have a distinct constitutional status, which has assumed an even sharper outline since the 2001 revision of the Constitution: legislative power is now exercised by the state and the regions under the Constitution, on the basis of their respective powers, while residual powers are conferred on the regions (Art 117). Article 114 introduces a new category of local authority, the "metropolitan city" (*città metropolitana*), but for the moment none exist (although this authority had already been introduced in law by Law 142/1990) and the perimeter of the city forms a framework for co-operation in certain cases only (eg in Bologna). Metropolitan cities will not, therefore, be discussed in the following paragraphs.

Article 114 appears to place all the entities on the same footing as "autonomous entities possessing their own regulations, powers and functions".[15] However, they are not in fact of the same nature. The Constitutional Court has held that the new constitutional order still assigns a special position to the state, as the "unitary body of the Republic", and that the

15. Sub-paragraphs 1 and 2: "La Repubblica è constituita dai Comuni, dalle Province, dalle Città metropolitane, dalle Regioni e dallo Stato".

"I Comuni, le Province, le Città metropolitane e le Regioni sono enti autonomi con propri statuti, poteri e funzioni secondo i principi fissati dalla Costituzione".

entities listed in Article 114 are not all of the same nature and do not all have the same powers (274/2003, 24 July 2003).

Firstly, there is definitely a difference in nature between the regions and local authorities. Only the regions have legislative powers; the standard-setting instruments – constitutions and regulations – adopted by local authorities in the exercise of their powers are subject to regional and state legislation and to its implementing regulations, whereas regional legislation and state legislation have the same legal force within their own spheres of competence. As regards the exercise of local authorities' standard-setting powers, the La Loggia Law distinguishes between the power to establish the authority's own constitution and the power to make regulations.

The former means granting local authorities the right to freely determine their mode of organisation and operating rules in compliance with the rules established by national legislation (Art 117 p); the rules governing the performance of the administrative functions assigned to local authorities come under the local authorities' power to make regulations, in accordance with national and regional legislation, which appears to preclude any involvement of national or regional authorities' regulatory power in this area (L.131/2003, Section 4, para.4). Yet local authorities' standard-setting instruments do not rank as laws and, subject to supervision by the Constitutional Court, the competent parliament alone is empowered to determine how detailed the rules and controls it establishes will be, provided that this does not deprive local self-government of all room for manoeuvre.

Secondly, Article 118 introduces a further distinction, this time in favour of municipalities: all administrative functions are in principle assigned to municipalities, unless the need to exercise them on a unitary basis requires them to be assigned respectively to the metropolitan city, the province, the region or the state on the basis of the principles of subsidiarity, differentiation and appropriateness. It is also specified that municipalities, provinces and metropolitan cities exercise two categories of administrative function: "own administrative functions" and administrative functions "conferred" on them by regional or national legislation in their respective areas of competence. Law 131/2003 (known as the La Loggia Law) regulates the application of these provisions, requiring the state and the regions to share out administrative functions in accordance with their respective powers, assigning those functions to the province, the metropolitan city, the region or the state only in cases where this seems necessary to ensure that they are exercised on a "unitary"

basis (*l'unitarietà di esercizio*), or for reasons relating to the smooth conduct, efficiency or effectiveness of administrative activity, or for functional or economic reasons, or where so required by programming or territorial homogeneity, taking account of the allocation of subsequent functions and the responsibilities of functionally autonomous bodies, which may also be in the economic development and service management sector. All the administrative functions not shared out in this way belong to the municipalities, which exercise them alone or via their groupings (Section 7, para.1).

For the moment it is impossible to forecast the real scope of the presumption of competence thus established on behalf of the municipalities for the exercise of administrative functions. Many comments have been made on the different categories of administrative function distinguished by the Constitution and on their content, but have not led to a definite conclusion, in the absence – at any rate for the time being – of a Constitutional Court judgment. Moreover, the grounds listed by the La Loggia Law leave very broad discretion to the national and regional parliaments. Thirdly, the distribution of powers between the national parliament and regional parliaments is unclear: the Constitutional Court has identified various areas in which there are transverse powers and in which it will not be easy to determine whether regional or national legislation should determine the relevant administrative functions. Lastly, section 7, para.6 of the same law provides that until the entry into force of the section's provisions for the allocation of administrative functions, the latter will continue to be exercised under the provisions still in force, subject to the decisions of the Constitutional Court.

However, it should be borne in mind that the former Article 118 of the Constitution already provided in para.3 that "the region shall normally exercise its administrative functions by delegating them to the provinces, municipalities or other local authorities …". Law 142/1990 introduced the general competence clause for municipalities and provinces (now sections 13 and 19 of the Consolidated Law on Local Government (Legislative Decree 267, 18 August 2000)), but the combined new Articles 117 and 118 could be interpreted as contrary to the general competence clause. Above all, the Bassanini reform (including Law 59/1997 and Legislative Decree 112/1998) provided for the administrative functions of the state and regions to be transferred to the municipalities and provinces, and by 31 March 1999 the regions were required to adopt legislation determining the administrative functions that were to be exercised at regional level, the others being transferred to local authorities. It is still difficult as yet to determine which

additional transfers should stem from the new Article 118 and the La Loggia Law, and even whether they will be of any significance.

To facilitate the municipalities' takeover of administrative functions, the national parliament has encouraged co-operation, especially in the form of unions of municipalities (Consolidated Law, section 32). This form of co-operation initially met with reluctance on the municipalities' part because it was presented as a step towards merging and concerned only municipalities with fewer than 5 000 inhabitants. Since 2000 it has simply been a form of voluntary co-operation, with no demographic conditions attached, which has prompted municipalities to embark on this process more easily. The number of unions of municipalities thus rose from 50 in 2000 to 251 at the beginning of 2005 (with 3.5 million inhabitants and 1,108 member municipalities).

The 2001 constitutional revision also put an end to scrutiny of the legality of local authority measures, which was performed by the regional supervisory committee. As of now, challenging the legality of a local authority measure can be done only by filing an ordinary application with the regional administrative court. However, the new Article 120 of the Constitution and section 9 of Law 131/2003 provide that the government may act as a substitute if a local authority or a region fails to meet Italy's international or Community obligations, or if this is required in order to safeguard the country's legal or economic unity, particularly the basic standard of benefits required for the enjoyment of civil and social rights beyond the territorial boundaries of local authorities. The government may also appoint a commissioner who will deal with substitution measures. Section 137 of the Consolidated Law, which has remained in force, already provided for a similar system. Also still in force is the procedure for extraordinary annulment, which empowers the government to declare directly a local authority measure null and void if the unity of the legal system is endangered (Section 138) – a power seldom exercised.

However, account must be taken of the supervisory powers of regional authorities, which derive from the sectoral legislation produced by the regions themselves and may include supervision arrangements as is the case in town-planning and environmental matters. For example, the general regulatory plans adopted by municipalities are subject to the regional authority's approval unless this function is delegated to the province, as is now often the case. An extension of the regions' legislative powers might result in a marked increase in similar procedures.

The *prefetture* continue to co-ordinate central government departments at provincial and regional level, in support of local authorities, and to supervise local authority bodies, but not to carry out direct scrutiny of their measures. They have been reorganised in order to reinforce the state's presence in the provinces and regions and increase its efficiency under Legislative Decree 300 of 1999 and Decree of the President of the Republic 180 of 3 April 2006. The *prefetto* runs the "government territorial office" and exercises policing, public safety and civil security powers. In addition, the standing conference chaired by the *prefetto* in each region and each province brings together the officials in charge of central government departments, the president of the province or region, the mayor of the county town and the mayors of the municipalities affected by the agenda. The *prefetto* of the region may hold a meeting of the provincial *prefetti* to discuss issues of common interest. If certain central government departments do not provide the services they should in a satisfactory manner, the *prefetto* may, at the local authorities' request, ask them to take the appropriate steps; if this does not happen, he or she convenes the standing conference to identify the measures to be taken and may, if necessary, take action in place of the officials in charge of the departments concerned.

In terms of financial resources, local authority expenditure in 2003 (excluding that of the regions, with which it is often confused in international statistics) accounted for about 6.3% of Italy's GDP (municipalities: 74 billion euros; provinces: 11.3 billion euros). Local authorities' fiscal power has been gradually restored since the early 1990s. Municipalities and provinces now receive two kinds of tax revenue: the whole or part of the yield of certain taxes, including income tax, depending on the area's tax capacity, and revenue from their own taxation, which is now based primarily on land tax and the supplement to income tax, as well as the household waste disposal tax. More than 50% of municipalities' and provinces' ordinary revenue derives from taxation (52.6% where municipalities are concerned) and about 50% of this revenue derives from own taxation. However, the proportion of transfers has diminished in favour of the allocation of tax revenue. Regional, provincial and local authorities commit 79% of public sector investment expenditure (in 2004), with local and provincial authorities in fact accounting for 45% of that amount (ISTAT, 2000 and 2005).

In terms of the functions exercised, the changes to the Constitution are not yet apparent in practice. As the Audit Court noted in its report of 8 August 2005, the legislative decrees that the government is empowered to issue under Law

131/2003 (Section 2) to determine the "basic functions" assigned to municipalities, provinces and metropolitan cities, as provided for by Article 117, p. of the Constitution, have not yet been adopted and the national commission established by the 2003 Budget Law has not yet adopted the financing model which is to accompany this transfer of powers.

2) Functions

In practice, however, the municipalities perform the following functions:

- local policing;
- maintenance and operation of primary schools (but not staff management);
- social services and social welfare;
- adoption of town plans, conduct of urban development operations, environmental management;
- sporting and leisure amenities;
- culture and cultural property;
- roads and public transport;
- local public services for the supply of goods and activities fulfilling a social purpose or supporting the economic and civil development of the local community (Consolidated Law: section 112): service management can be separate from network management, but municipalities cannot relinquish the ownership of these networks (Consolidated Law: section 113); the law also regulates types of management to ensure compliance with the rules of competition; competitive tendering can cover several public services, with the exception of public transport;
- promotion of tourism.

The provinces exercise the following functions:

- secondary education: facilities, equipment and operation of secondary schools (but not their staff);
- transport;
- spatial planning and co-ordination of municipal plans;
- culture and cultural property;
- environmental protection;
- tourism, sport and leisure activities;

- on the other hand, the provinces have little responsibility for the social sector (eg 2% of total expenditure as against 10% in municipalities).

VI. The Netherlands

The Netherlands define themselves as "a unitary decentralised state". The principles underpinning the administrative organisation of the Netherlands have remained remarkably stable since they were established by Thorbecke around the mid-19th century, when the first constitution of the kingdom was modernised (1814-1815). He set them out as part of an organic theory of the state in which the municipalities and provinces were the components of the kingdom and were free to deal with their own internal affairs, but had to co-operate with the state in administering the kingdom (*medebewind* = co-governance), incorporated into the Constitution in 1887. The growth of the welfare state, especially after the Second World War, led to the expansion of "co-governance". Since the late 1990s there has been a tendency to return to greater differentiation between the functions of the state and those of local authorities.

1) Powers and resources

The administrative organisation of the Netherlands is still based on provinces and municipalities. The number of provinces remains stable (12), but for several decades governments have pursued a gradual policy of grouping municipalities through mergers: there were 574 municipalities in 1994 and 458 at 1 January 2006. There is also a form of functional devolution whose importance should not be underestimated: the water control boards (*wateringues* = *waterschappen*), which are also provided for by the Constitution (Art 133). Efforts have likewise been made to group them together for rationalisation purposes: the country is now divided into 27 *wateringues* (as against 129 in 1990 and 1,007 in 1970).

Ministries have their own field departments and inspectorates which follow up national policies and monitor the application of legislation within their remit. Above all, however, numerous autonomous authorities (*zelfstandige bestuursorganen – ZBO*) have been set up in recent years to implement national policies, and their responsibilities often affect local authorities. They are run by a board whose members are appointed by the minister for a fixed term of office and cannot be dismissed. The most important of these authorities from the local authority point of view include those placed under the Ministry of Transport, the Ministry of Social Affairs and the Ministry of Housing, Spatial Planning and Environment (VROM).

The forms of urban concentration in the Netherlands have prompted plans to set up urban regions which can bring together the largest cities with their peripheral areas and absorb provincial powers. A 1994 law providing for the formation of seven urban regions produced no results, but led to the formation of seven co-operation and planning areas (*kaderwetgebieden* = framework law areas) which have a "regional public body" (*regionaal openbaar lichaam*) formed by the member municipalities and exercising powers delegated by the municipalities and the province. Another law (known as the "Regio Plus" Law), which came into force on 1 January 2006, provides for new districts, determined by the provinces, for co-operation between the member municipalities of large conurbations ("plusregio"); the new law applies to the "framework law areas". It facilitates the setting up of these co-operation districts and eases the rules on identifying the powers to be delegated by the municipalities. It also facilitates co-operation between provinces and between and with the water control boards.

In the Netherlands more than elsewhere the conception, powers and functions of institutions are closely linked.

Municipalities and provinces are run by a directly elected council, an executive and the mayor (in municipalities) or the royal commissioner (in provinces). However, the mayor is always appointed by royal decree, as is the royal commissioner at provincial level. This power of appointment is not a mere formality, although it is exercised on the basis of a recommendation by the municipal council, drawn up in consultation with the royal commissioner, who proposes candidates to a municipal council committee meeting in private. At least the Minister of the Interior is bound by the recommendation made to him or her, which may be supported by a consultative referendum; the municipal council is empowered to hold this referendum (under the Municipalities Law of 7 March 2002, sections 61-61e, which replaced the 1992 law)[16] and can only disregard the outcome by a reasoned decision. However, the mayor is not the same as the executive, which is formed of aldermen/women (senior councillors) elected by the municipal council. The mayor is a member of the executive and chairs it (with voting rights), but also chairs the municipal council (without voting rights). The same applies at provincial level: the executive (*college van gedeputeerde staten* = deputation) is composed of

16. The Constitution does not contain any provisions on the holding of a referendum, whether at national, provincial or local level. However, local referenda are held on the basis of a broad interpretation of Article 5 of the European Charter of Local Self-Government. A local referendum is a non-binding consultation of the electorate.

aldermen/women (*gedeputeerden*) elected by the provincial assembly and is chaired by the royal commissioner. The law of 7 March 2002 and the Provinces Law of 10 September 1992, as amended by the law of 16 January 2003, introduced a major reform known as dualisation (*dualisering*), which means separating the executive from the assembly. As of now, the aldermen/women (deputies at provincial level) can no longer be council members, and the executive wields almost all administrative powers. In exchange, steps have been taken to reinforce the assembly's role in providing political guidance and supervision. Staggering the length of terms of office also contributes to dualisation: four years for the council and the aldermen/women and six years for the mayor (or the royal commissioner).[17]

This reform, which stems from a democratic principle, should be viewed in conjunction with the reform of public management pursued in the Netherlands in recent years. The clear-cut separation of the assembly and the executive is also designed to increase the management accountability of the executive, which implements a performance budget, drawing a clearer distinction between budget items according to the activities to be conducted and connecting up commitments, yields and results. This should improve assessment of the executive's management, whether in local matters or in terms of statutory duties.

According to various studies, dualisation has livened up the political debate at local level and has prompted local elected representatives to make greater efforts to reach out to the general public. In this sense, according to the same studies, the aims of dualisation – to reinstate the local council as a local political forum and restore its representative function to boost the local authority's profile in the local population's eyes – have been largely achieved. The reform has not yet been completed, however.

17. The aldermen/women and the assembly have the same term of office at municipal and provincial level (four years). The municipal council and the provincial assembly cannot be dissolved between two elections (Constitution, Art.129.4).

In many municipalities, the council and the executive are still seeking the best way to play their respective parts. A number of researchers, journalists and politicians agree that it will take a further four to eight years for the new system and the expected change in political culture to be fully established. In the March 2006 local elections, almost all the councillors and aldermen/women who had completed their terms of office under the former unitary system were either re-elected or stood for re-election.

The institutions thus reflect the close dovetailing of national and local policies, in the spirit of "co-governance" (*medebewind*), as is apparent from the powers and funding of local and provincial authorities. In terms of their formation and functions, municipal and provincial executives are in fact both local and state authorities.

The Balkenende government tabled a draft constitutional revision (No. 28509) aimed at introducing the election of mayors; the method of election, by direct or indirect suffrage, would then have been established by law. This reform was a key plank of the D66 government coalition party's platform. But the upper house rejected the bill in spring 2005 and since then the Cabinet seems to have reviewed its position. The reform would no doubt have made it necessary to reorganise the police, given the extent of mayors' policing powers in the Netherlands. The government in fact decided in October 2005 to assess the 1993 law on the police (see below), which will undoubtedly have repercussions on the organisation of the police.

Local regulatory power is vested solely in the municipal council or the provincial assembly. It derives from section 147 of the Municipalities Law and section 105 of the Provinces Law; in the latter case, however, the law does not restrict the exercise of regulatory power to the provincial assemblies alone, so that this power can also be exercised by the deputation (executive). It is exercised by decree (*verordening*). Municipal and provincial regulations rank lowest in the hierarchy of standards; they must comply not only with the law but also with the regulations adopted by ministers; municipal byelaws, which must comply with provincial regulations, are on the same footing as water control board regulations. Where a rule on a given subject has been established by a law or a regulation issued by a higher authority, the municipal byelaw is valid only if it adds something to the rule.

Supervision of local government measures is exercised by the Minister of the Interior. Either on his or her own initiative or following referral by the mayor

or a councillor, the minister proposes that the government suspend or set aside by royal decree any municipal measure conflicting with a higher rule. The decree is subject to appeal to the courts.

In practice, however, the scrutiny carried out by ministerial departments under special laws may be of greater importance. This is the case with the Inspectorate of the Ministry of Housing, Spatial Planning and Environment (VROM), which has specialist sections in the ministry's areas of competence. Representatives of the inspectorate sit on the provincial planning committees, which discuss draft town plans (*bestemmingsplan*), although the decisions on the subject rest with the provincial deputation. The inspector can refer a matter to the minister, who is empowered to take the decision in the deputation's place if the town plan is contrary to the binding requirements of national planning (six cases under the previous parliament and none between 2002 and 2006).

The financing of local authorities displays similar features.

Public expenditure by municipalities and provinces accounts for only 8.5% of GDP and 34% of total budgetary expenditure, and the provinces account for 8.4% of the total expenditure of municipalities and provinces (source: Ministry of the Interior, 2003). The water control boards' expenditure should be added to this, but the figures are not available. Overall, however, local authorities commit 64.8% of total public investment expenditure.

In 2005 the municipalities' main financial resource was earmarked grants (36%) allocated on the basis of objective indicators to cover costs (eg education and unemployment benefit). The second main resource is the overall grant from the Municipalities Fund (*Gemeentefonds*) (27%). Own resources account for a third of all resources (33%). They include operating yields and revenue from spatial planning operations (16%), the tax on immoveable property (*onroerende zaakbelasting-OZB*), charges and dues (7%) and various lesser local taxes (2%). Lastly, municipalities also receive financial transfers from the provinces and the European Union (4%).

Municipalities' own taxation accounts for about 10% of their total resources. This share will be further reduced when the housing tax, payable by the occupier of a property, is abolished in 2006.

Within the statutory framework, municipalities can make fairly free use of the resources from the Municipalities Fund and their own resources to finance their local policies and their participation in joint schemes. But it cannot be inferred that earmarked grants identify the municipalities' mandatory powers. Earmarked grants are also used to indicate the government's responsibility, or if the government wishes to influence expenditure levels. The share of earmarked grants may be expected to continue to fall, as it has since 1998, owing to the government's policy of reducing the costs attendant on supervising the use of these grants.

At the end of 2004, the government, the Association of Netherlands Municipalities (VNG) and the Interprovincial Consultation Forum (*Interprovinciaal Overleg-IPO*) adopted and signed a major policy document, the "*Code of Inter-Administrative Relations*". Building on the many statutory provisions governing relations between the different tiers of government, the code sets out a new shared vision of those relations. It focuses on the vertical relations between central government, municipalities and provinces and aims to inspire changes in practice and various reforms. The intention is to ensure that all tiers of government perform their tasks better and improve their efficiency, both together and separately. According to the code, action must be based on a problem-oriented approach, a clear division of responsibilities and freedom of policy for decentralised authorities.* The spirit of the code may be summed up as follows: "decentralised if possible, centralised if necessary" (para.1.c). The code provides an up-to-date version of the traditional "*medebewind*", designed to cut down the number of unnecessary rules and procedures (deregulation and debureaucratisation), to reduce co-governance when it goes into too much detail, to restrict the number of specific grants and to lessen supervision of local authorities. It also provides for a standing committee to monitor implementation of the code's guidelines and discuss issues concerning relations between the different levels of government.

* Translator's note: "devolved authorities" would normally be used here, but as the official English version of the code uses "decentralise" to mean "devolve", the former term is retained in this section of the report.

The code contains specific instructions on a wide range of topics and aims to differentiate more clearly between matters to be dealt with jointly by the three tiers of government and matters for which each tier bears separate responsibility. It sets out the rules for good practice in mutual relations between the government, the Association of Netherlands Municipalities and the Interprovincial Consultation Forum (para.I.4).

2) Functions

Functions are shared out on the basis of Article 124 of the Netherlands Constitution. Municipal and provincial authorities are empowered to administer the internal affairs (*huishouding*) of the municipality or province (para.1). They may be required by law, or pursuant to the law, to provide regulation and administration (para.2) (co-governance or *medebewind*). So there is one area in which the provinces and municipalities act freely in the local interest, within their territorial remit, and another area, that of co-governance in the strict sense, in which they act in compliance with the law and with the obligations imposed on them. Over time, this second area has taken precedence. Various reforms and draft reforms are now attempting to draw a clearer distinction between the respective functions of the state, provinces and municipalities (particularly in the social sphere and in spatial and town planning), but this clarification does not call co-governance into question.

Municipalities adopt town plans (*bestemmingsplan*) in compliance with the plans drawn up by the provinces (*streekplan*) or the framework law co-operation areas (regional structural plans); they also have to take account of the "decisions of essential importance" included in the national spatial plan (the fifth of which is currently being adopted), and comply with the mandatory instructions these decisions sometimes contain. The provincial deputation approves municipal town plans. Municipalities have control over planning operations and can resort to expropriation, but central government implements national policies such as the investment budget for urban renewal, which is part of the fourth national spatial plan, according to a long-term development programme. Municipalities submit projects which are assessed by the ministry (for the 30 largest municipalities) or the province (for other municipalities). They also grant planning permission.

The new Spatial Planning Law of 20 October 2006 makes sweeping changes to the system in force. The new law will not come into force until the last quarter

of 2007, after enactment of a law laying down the arrangements for its introduction, which will include provisions specific to large conurbations, and of implementing regulations specifying the technical arrangements. The new law aims to distinguish more clearly between the functions of the three tiers of government (state, provinces and municipalities) in spatial planning and the policies and legal measures for implementing them. The state, provinces and municipalities are thus invited to frame their strategic vision (*structuurvisie*) of spatial planning. Municipalities' planning powers are extended. Firstly, the municipal town plan will now have to cover the municipality's entire territory and apply to both the land and the subsoil, whereas it is currently required only outside built-up areas.

If no development is planned, the municipality can simply adopt a land control regulation (*beheersverordening*) to determine land use arrangements as at the date on which the regulation is published. These documents will have to be updated every ten years. Secondly, the requirement that the province approve the municipal town plan is abolished.

However, since provincial and national interests are involved, as expressed in their strategic vision, the provinces and the state are given new ways of ensuring that they prevail. Firstly, a project decision can be adopted by the province or the state as well as the municipality in order to initiate a project which is not compatible with the municipal town plan, without having to alter the latter at once. However, it must (normally) be altered within a year of the project decision becoming final. Secondly, as regards projects within their remit, the provinces and the state can lay down rules governing municipal town plans, which must be brought into line with them. Until this has been done, all permits must comply with the higher rules laid down by the province or the state. These rules may take the form of an "integration plan" (*inpassingsplan)* decided by the province or the state. The plan establishes the arrangements for incorporating the project into the existing municipal town plan(s).

Housing was historically a key function of municipalities in the modern era. However, the 1991 Housing Law transformed low-cost housing agencies, which were administrative bodies, into private-law foundations over which neither the ministry nor the municipalities nor the provinces now have any direct authority. The minister nevertheless retains the power to intervene in the event of mismanagement. Municipalities still exert indirect influence over the foundations via town plans and planning permission; they can have

representatives on the governing board if the foundation's rules, which are subject to the approval of the province, make provision for this. Low-cost housing foundations bear sole responsibility for the building programmes they undertake, but have a statutory obligation to build housing for families with incomes below a certain threshold and to reinvest their profits in housing construction. The Central Housing Fund, an independent authority (ZBO) attached to the VROM, provides funding. The national programme for urban renewal mentioned earlier, which is carried out by the municipalities with state support, also contributes to housing policy.

As far as social policy is concerned, the municipalities' role may be summed up as follows. The state establishes rights for beneficiaries and obligations for municipalities, together with funding measures, but the law leaves municipalities considerable freedom to frame the policies best suited to local demand and achieve their statutory objectives. Recent legislation has reinforced this overall picture.

The law on people with disabilities, for example, requires municipalities to provide wheelchairs and ensure that housing and public transport are adapted to these people's needs – measures which can be extended to the elderly. Since 1994 state funding for municipalities has been incorporated into the Municipalities Fund (i.e. into the overall grant).

The new childcare law, which came into force in January 2005, bases the development of day nurseries on three principles: 1) supply must be produced by market forces, on the basis of demand; 2) demand is supported by cost-sharing between the parents, the employer and the municipality; 3) the municipality must firstly monitor the quality of the services provided and secondly ensure, by bearing part of the cost, that certain sections of the population have effective access to day nurseries.

Since 2004 the Law on Work and Assistance (*Wet werk en bijstand*) has assigned municipalities the task of implementing labour market reintegration policy. The principle is that anyone who asks the municipality for assistance must receive help in seeking a job. This policy falls into two parts: a guaranteed minimum income for residents of the municipality in the form of a minimum income allowance whose amount and conditions are determined by law, and reintegration measures designed to help beneficiaries find another paid job. The municipality pays the allowance in accordance with the statutory conditions, but is free to decide on the steps it takes to encourage return to the

labour market. The financial instrument is the Municipal Work and Income Fund, which is financed by a state grant in two parts, the first to finance allowances and the second to finance integration measures. The municipality retains the balance of unspent allowances, but has to cover the deficit by other means if the number of beneficiaries increases; conversely, any surplus in the integration part of the grant must be reimbursed to the state. This is a financial incentive to municipalities firstly to reduce the number of beneficiaries and secondly to allocate all available resources to labour market integration and make efficient use of them, so as to reduce the number of beneficiaries.

Income support policy is a matter for central government, not for local authorities. However, municipalities can set up a special facility to assist the elderly and people with chronic illnesses; this is then financed out of the Municipal Fund grant.

The 2002 reform of school education altered the distribution of tasks between the state, municipalities and schools. The state continues to establish the legal framework, draw up curricula, set objectives, allocate resources and monitor and assess the educational system, especially the results achieved by municipalities and schools. Schools have been given greater independence and receive resources of their own to carry out their tasks and manage and pay their staff. They request funds from the state under the terms of a contract. Municipalities retain overall responsibility for youth policy, school premises, school transport and a teaching-support policy for which they receive applications from schools and grant them resources after assessing their projects. The Constitution requires municipalities to ensure that there is at least one state school on their territory, although most schools are private (albeit with public funding). Municipalities also receive state funding on a contract basis, with a specific grant for teaching support; the 30 main cities do this directly with the state, and the others with the province.

Local authorities do not exercise functions in the areas of public health, medical care or hospital care.

Where public transport is concerned, the law provides for a fairly high degree of integration at national level, and local authority functions are part of this system. Municipalities organise and sometimes operate urban transport facilities. Licences are issued to public transport companies by the provinces or the regional public bodies in the framework law areas (*kaderwetgebieden*) on the basis of competitive tendering. Rates are regulated at national level on the basis of several zones, and tickets are valid throughout the country. The provinces and regional public bodies receive a state grant to cover operating costs, which has been incorporated into a specific grant for transport and traffic since January 2005. Municipalities and provinces will also have to adapt their town plans and development plans to the national transport and mobility plan (*Nota Mobiliteit*); in fact they have already started to take account of the plan's requirements. It concerns both transport flows and investment and is based on the 1999 Law on Transport and Mobility; the last part of the plan is subject to a "decision of essential importance" within the meaning of the law on spatial planning. The plan provides for funding for the main schemes that municipalities and provinces are required to carry out. The provinces and regional public bodies in the framework law areas also have to adopt their own transport and mobility plans.

Responsibility for water supply and drainage/sewage is shared between the municipalities and water control boards. Drinking water production and supply are the responsibility of the water companies, which are municipal public enterprises with the municipality (and sometimes several municipalities) as the sole shareholder. The drainage/sewage network is the responsibility of the municipalities, but the water control boards are in charge of waste water treatment. The water companies, municipalities and water control boards are free to set their rates, which apply to users. The government would like to dissociate rainwater networks from waste water networks, but the cost is compelling it to seek new funding methods.

The energy system is based on regional gas and electricity companies in which the municipalities and provinces are the sole shareholders; however, the law now limits their influence over the companies' operation. Network operators form an independent branch of the regional energy companies. Network access rates are now set by the sector regulator.

Municipalities and provinces are free to carry out economic development activities subject to compliance with Community rules. Some activities are co-financed by the state, particularly where urban development programmes are

concerned. There are also various specifically targeted programmes at national and provincial level to which funding is allocated on the basis of competitive tendering.

However, the mayor's policing powers and the municipal council's power to determine penalties for petty offences, within certain limits, are certainly one of the most distinctive features of the Netherlands' municipal system.

Firstly, the municipal council is empowered to rule that violation of municipal byelaws is subject to criminal penalties and to determine the amount of the penalty within the limits set by the Criminal Code (2,250 euros for a fine), including a prison sentence of up to three months (Municipalities Law, section 154).

This also applies to regulations established by other authorities placed under the municipal council's supervision, but only the council is empowered to provide for and determine penalties. Offences are recorded by the police and criminal proceedings brought by the prosecuting authorities. In spring 2005 the government tabled two bills intended to make certain offences subject to administrative penalties, which would be imposed by the local authority and subject to appeal to the administrative courts; the yield of administrative fines would accrue to the municipality. The first bill concerns breaches of the peace (No. 30101) and the second illegal parking and various minor traffic offences. One reason for this plan is the municipalities' complaint that the police do not pay sufficient attention to failure to comply with municipal byelaws.

Secondly, the mayor is a policing authority with very broad powers. It should be pointed out that the 1993 law reforming the police (last revised by the law of 2 April 2003) set up 25 regional police forces and a national police force in charge of national tasks (National Police Services Agency). In organising the police regionally, the country was divided into 25 police regions. A rural province may have anything from one to three police regions, depending on the degree of urbanisation. Each police region is based on three authorities: the head of the police force, who is the mayor of the main town or city in the police region; the police chief (a police officer) and the public prosecutor. In judicial police work the regional police force comes under the authority of the public prosecutor, but when keeping law and order and dealing with emergencies, it comes under the authority of the mayor. The mayor then liaises with the Ministry of the Interior, which is responsible for distributing resources and setting the standards which police forces and their activities must observe.

Each police region is administered and managed by a "regional police board" comprising all the mayors of the police region and the public prosecutor, and chaired by the police force management authority, who is the mayor of the largest town. The regional police board decides on its organisation, staff numbers, budget, annual accounts, policy and annual reports, but it has no operational functions. The police forces management authority, the police chief (a police officer) and the public prosecutor regularly discuss police forces management. Each police region is thus comparatively autonomous in terms of its organisation and of the management of its own finances. Each region receives an overall grant from the Ministry of the Interior, a grant from the Ministry of Justice and a few special grants. The Ministry of the Interior also lays down the rules governing the management of regional police forces and supervises their financial management.

Where judicial policing is concerned, the regional police force is placed under the authority of the public prosecutor, but when dealing with public safety and emergencies, it comes under the authority of the mayor of the municipality in which it intervenes; the mayor reports to the municipal council.

On the basis of the National Security Programme, the Ministry of the Interior and the Ministry of Justice conclude a contract with the management authority of the regional police force, on police force management and the results the police must achieve.

In October 2005, on the basis of an assessment of police organisation in the Netherlands, the government proposed replacing the current system in which responsibility for the police is devolved to the regions with a new body that would be directly managed at national level.

VII. Portugal

Portugal may be defined as a partially regionalised unitary state. The 1976 Constitution provided for the establishment of two autonomous regions for the archipelagos of the Azores and Madeira (Part VII) and a number of administrative regions for mainland Portugal; these regions were regarded as local authorities (Part VIII) but their establishment was subject to the demarcation of their boundaries and definition of their status. The necessary laws were adopted, but the referendum planned at the time of the 1997 constitutional revision resulted in the mainland regions being rejected by a substantial majority (almost 64% of "no" votes) on 8 November 1998. The reforms carried out in recent years have broadened the autonomy of the island regions (1997 constitutional revision) and consolidated the municipalities (Laws 159 and 169/1999 and Law 5-A/2002), to which new functions have been transferred. Laws 10 and 11/2003 have updated the forms of co-operation between municipalities. The size, co-operation arrangements and functions of municipalities leave little room for introducing an intermediate tier, which might weaken them. The system governing the island regions will not be discussed in the following paragraphs.

The new Local Budget Act (Act 2/2007, published on 15 January) defines the new competences of the local governments and provides the model for State delegation of competences to local government.

1) Powers and resources

Mainland Portugal currently has three tiers of government. Devolution concerns only the municipal tier.

Mainland Portugal's territorial organisation is based on a combination of devolution and decentralisation. Progress with devolution is part of the democratic programme introduced by the Constitution (Art 6), which even uses the term "local government" (title of Part VIII); the 1997 revision added subsidiarity to the principles to be observed by the unitary state (Art 6). Under the terms of the Constitution, local authorities (*autarquias locais*) are "corporations with representative organs serving the particular interests of the population in their territorial areas" (Art 235). Local authorities take the form of parishes (*freguesias*), municipalities (*municipios*) and administrative regions (Art 236).

Municipal devolution in fact operates on two levels (Arts 235-265): 308 municipalities proper, which are extensive and were delineated in the 19th century (826 at the end of the 18th century, 291 in 1911), and 4,259 parishes, which are infra-municipal authorities and public-law corporations, some of them extensive (some have more than 5 000 inhabitants and a few have several tens of thousands of inhabitants). These are territorial divisions which can only be altered by law. On the other hand, the territorially defined residents' organisations set up in parishes are not local authorities and do not have legal personality (Art 263 ff). The Constitution also allows other forms of local self-government (*outras formas de organização territorial autárquica*) to be set up in large urban areas (Art 236.3). Lastly, municipalities can form associations and federations to manage common interests (Art 253); there are 58 bodies of this kind. Since the 1997 constitutional revision, parishes have also been allowed to do this (Art. 247). Law 11/2003 redefines the forms of intermunicipal co-operation and integrates them more fully.

The 2/2007 Act encourages intermunicipal cooperation and a new legal framework for intermunicipal structures is currently being prepared.

Law 44 of 2 August 1991 created two metropolitan areas, one for Lisbon, (2.5 million inhabitants, and the same boundaries as those established for the Lisbon region by the Law of 28 April 1998, minus two municipalities, ie 18 municipalities) and the other for Porto (1.15 million inhabitants, 9 municipalities). They are governed by a new law (10/2003) which now distinguishes between two categories: the greater metropolitan area (at least 350,000 inhabitants) and the metropolitan area (at least 150,000 habitants), reflecting the intention of promoting co-operation between municipalities in the same conurbation. The law defines metropolitan areas as associative territorial public-law corporations (section 2).

Significantly in terms of the importance assigned to municipalities in Portugal, the provisions of the Constitution which concerned the setting up of administrative regions as local authorities viewed them as deriving partially from municipalities, with regard to both their boundaries and their organs, obviously for the purpose of protecting municipal autonomy in relation to the regions.

The state territorial administration is organised into 18 districts, on which five Regional Co-ordination and Development Commissions (CCDRs) were superimposed in 1979.

The district has been Portugal's traditional territorial sub-division since 1835. It was to have been abolished with the setting up of the administrative regions (Constitution Art 291). The government-appointed civil governor exercises policing powers and has authority over the ministries' field departments. Each district has an assembly made up of representatives of the municipalities. However, the main ministries have started to set up their own regional structures.

The CCDRs are placed under the authority of the Ministry of the Environment, Spatial Planning and Regional Development and are responsible for implementing regional development plans. They manage grants from the European funds, co-ordinate ministries' activities in the matters within their remit and provide municipalities with technical assistance. To this regard, the 50 offices providing technical assistance to the main municipalities were attached to the CCDRs (GAT – 43); municipalities were divides up among those offices since the mid-1970s: the costs are shared by the state and the municipalities, and the offices' priorities are determined by the mayors, who also put forward names for the director, the latter being appointed by the minister.

All local authorities are administered by an elected assembly and a corporate executive body, with a four-year term of office. However, the municipal assembly is composed partly of the chairmen/women of parish boards and partly of councillors elected by direct suffrage who are at least equal in number to the former (Art 251). Likewise, the administrative regions were to be administered by regional assemblies composed partly of members elected by direct suffrage and partly of a smaller number of members elected by the college of directly elected municipal councillors (Art 260). The executive body is always corporate; at municipal level it is also elected by direct suffrage and the candidate heading the winning list is elected mayor.

The metropolitan areas of Lisbon and Porto are administered by an assembly composed – on a proportional basis – of elected members of the member municipalities' assemblies, as well as a council (*junta metropolitana*) formed by the mayors and an advisory metropolitan committee composed of the president of the CCDR, some members of the council and representatives of certain public services with responsibility for the area concerned.

Municipal and parish assemblies are empowered by law (currently Law 169/1999) to make byelaws for the exercise of the local authority's functions. These byelaws are subject to compliance with the law and with the regulations of higher authorities.

Administrative supervision (Constitution Art 242) is intended to ensure that local authorities comply with the law. It is exercised by the civil governor, who refers illegal measures to the administrative courts. It is also exercised by means of inspections. Town plans are subject to prior approval.

With a volume of expenditure of nearly 700 million euros (2006), half of which was spent on investments, the Portuguese municipalities represent 5% of the GDP and 9.7% of the total public expenditure.

Concerning the resources, fiscal taxes represent 33% of the total municipal resources. Municipalities receive the full yield of four taxes, but exercise fiscal power only over the land tax, whose rate they determine within the statutory limits, and the *derrama*, a surtax on corporation tax which municipalities can levy and whose rate they determine within the statutory limits; the yield from this tax can be used only to finance investments or redress the municipality's financial balance. Grants and subsidies account for 33% of total resources. The main grant consists of a levy on the yield of three national taxes, which is then distributed on the basis of objective criteria; a small portion of this amount finances parish budgets. Municipalities can borrow freely provided that they observe the statutory debt ratios; parishes can only contract short-term loans.

2) Functions

Since 1999 Portugal has pursued a policy of transferring functions to the municipalities and parishes; this is coupled with a new classification of local authorities' functions in their relations with the state, and no doubt explains why machinery for inter-municipal co-operation has been strengthened since 2003.

However, there is no identifiable general competence clause either in the Constitution or in the legislation on local government. The Constitution defines only the legal nature of local authorities and the purpose of their activity, while the legislation defines functions only in terms of the specific matters they cover. The general competence clause might be inferred from section 48.l,r of Law 79/77 of 20 October 1977, reiterated in section 53 of Law

169/99 (paragraph 1,q), which provides that the municipal assembly "shall decide and deliberate on all matters designed to further the particular interests of the local authority". However, there is no case-law to that effect.

Law 159/99 of 14 September 1999 is a framework law on local authority functions which programmes the transfer of functions ("functional areas of responsibility and functions"). Under section 4, the functional areas of responsibility and functions established by Chapter 3 of the same law were to be gradually transferred to municipalities over the four years following the law's entry into force. The transfers go hand in hand with the resources earmarked for them and the staff and property required for the exercise of the functions transferred. However, the law specifies that "the transfer of functional areas of responsibility and functions shall not cause an increase in the overall public expenditure planned for the year in which the transfer takes place" (section 3.3).

Portuguese law also features a distinctive classification of powers and functions.

Section 2 provides that functions and functional areas of responsibility are transferred to local authorities (*autarquias locais*) but that the powers required for their exercise are conferred on the organs of those authorities. It distinguishes between six categories of power: consultative, planning, management, investment, auditing (*fiscalização*) and licensing (*licenciamento*) powers. It specifies that investment powers include the identification and drawing up of projects and the financing, construction and upkeep of the facilities built. Strangely enough, this list includes neither the power to levy taxes nor the power to make byelaws for the exercise of functions, both of which local authorities exercise in practice. The powers of municipal and parish organs are in fact listed in full in Law 169/1999: the power to adopt municipal orders and byelaws is exercised by the municipal assembly (section 53.2,a), as is fiscal power (e to h); the same applies to parish assemblies, within the limits of parish functions (section 17.2, d and j).

The law also distinguishes between functional areas of responsibility (*atribuções*) and functions (*competências*). Functional areas of responsibility are listed under Section 13; functions are the subject matter of the powers that local authority organs are entitled by law to exercise in these fields (Chapter 3 of the Law, sections 16 to 31). For example, the functional areas of responsibility assigned to local authorities include rural and urban

infrastructure facilities (section 13). But "municipal organs shall be responsible for the planning, management and carrying out of investments in the following areas: a. green areas; b. streets and public thoroughfares; c. municipal cemeteries; d. installations for municipal public services; e. trade fairs and markets" (section 16). The same technique for defining functions is used in the other fields. Portuguese law thus associates the definition of the subject matter of a function with the definition of the powers required to exercise that function.

Lastly, Portugal's new legislation disregards the standard distinction between own powers (functions)* and delegated powers (functions), and distinguishes between functions concerning exclusively municipal areas of activity, which are of a general nature and are "universally" exercised (ie by all municipalities), and functions relating to areas of activity incorporated into regional or national action programmes (section 5).

In principle, municipalities' functional areas of responsibility and functions are "universal"; those which are not are those exercised only by certain municipalities under a contract between the ministries and municipalities concerned; this contract is drawn up on the basis of a contractual classification identifying the costs and the activity to be transferred (section 6). "Non-universal" functions therefore correspond to a contractual form of co-operation between the state and municipalities.

Section 8 details the system governing these contracts (*parceria* = association). The contracts establish the arrangements for the parties' involvement in designing and managing the corresponding facilities or public services, and the necessary resources. However, the law allows for the possibility of introducing the contract system for other functions, on the basis of a specific document certifying that the contract system is being used; the contract system could therefore be used in some cases for the exercise of "universal" functions (section 8.3).

The law provides for the setting up of management units to run the operational local and regional development programmes adopted to implement the European structural funds (section 9). The municipalities in the area concerned

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* Translator's note: The translation of the French term "compétences" adopted in this report – "functions" – is unusable in this and a few other passages because standard English usage refers to "powers" in this context. "Powers" is therefore used here, in the broader sense mentioned at the end of the third paragraph of Section I.A on definitions.

have to form a majority in the management unit. This type of organisation goes back quite a long way and the contracts were first introduced to implement the structural funds (as of the late 1980s). In time, municipalities have assumed greater responsibility for the management of these programmes.

Lastly, the system of local government functions involves parishes (*freguesias*). Section 14 of Law 159/99 defines parishes' functional areas of responsibility in terms similar to those of municipalities, but with a number of significant differences. For example, parishes are responsible for environmental matters and public hygiene, but municipalities bear sole responsibility for drainage and sewage, and also for transport, communications and energy. Education, however, is referred to in identical terms in both cases. In addition, the law does not give a precise definition of the matters in which parish organs exercise certain powers, or of those powers. This is because the sharing out of functions between the municipality and the parishes largely depends on the municipality. The latter may transfer some of the tasks assigned to it to the parishes, provided that it transfers them to all the parishes that so wish (section 13.2). In investment matters, this takes the form of a delegation agreement setting out the arrangements for co-operation between them (section 15). Furthermore, the powers of parish organs concern only the planning, management and carrying out of investments within their functional areas of responsibility, in the cases and under the conditions prescribed by law (section 14.2).

In practice, the scope of programme contracts for co-operation between the state and municipalities in carrying out investments is very broad and covers the following areas:

a. Basic drainage and sewage, including water catchment, conveyance and storage systems, but not the domestic network; systems for the collection, transport and disposal of solid waste and waste water systems;
b. Environment and natural resources: exploitation of water resources, upkeep and rehabilitation of waterway banks, regulation of small waterways and introduction of pollution control systems;
c. Transport infrastructure, including road network construction and maintenance;
d. Communications infrastructure and facilities;
e. Culture, leisure and sport;
f. Education and vocational education and training;

g. Youth, through the creation of the necessary youth support infrastructure;
h. Civil protection, including fire engines, preventive facilities and firefighting assistance;
i. Low-cost housing;
j. Promotion of economic development, including infrastructure in support of productive investment;
k. Health and social welfare.

Municipalities have the power to establish and to fix the charges of

Municipalities are empowered to establish and set the rates for public services within their remit. (law 53-E/2006). They can set up local, municipal or intermunicipal enterprises, which may take the form of semi-public corporations, or they can have shares in such enterprises (law 53-F/2006).

Generally speaking, Portugal's municipalities exercise fairly broad functions in planning and operational matters and in investment in the various sectors listed by law, but not many functions in public service management, except as regards strictly local public services, such as electricity supply and public lighting; urban transport, municipal aerodromes and school facilities (but not education); libraries, theatres and museums; social amenities (day nurseries, kindergartens, homes for the elderly and people with disabilities); water supply and management of protected areas of local interest.

VIII. The United Kingdom (England)

The United Kingdom has extensive local authorities with substantial resources. However, since the reforms of the 1980s and 1990s, these authorities have lost some of their functions or some of the freedom of action they had in these areas. Changes have also been made to their structure with the partial implementation of the 1996 boundary reform and the introduction of mayors elected by direct suffrage in a few cities. Devolution also leads to somewhat more varied structures and functions in Scotland and Wales, but its effects have not yet made themselves felt, and the case of England is sufficiently distinctive for the purposes of this study.

The White Paper published by the Blair government in October 2006, "Strong and Prosperous Communities" (Cm 6939, 2 vol.), announces a large-scale reform: pursuing territorial reform to extend the system of unitary councils while also strengthening the role of communities (parishes, residents' associations and others) in local government; making local public services more responsive to local preferences, especially by increasing residents' participation; imposing real local leadership through further institutional form; establishing local authorities' leading role over all their local partners and reinforcing co-operation with central government and attention to national priorities by means of contractual arrangements (Local Area Agreements and Multi-Area Agreements); and combining performance scrutiny and local government responsibility. The bill had not yet been tabled by April 2007.

1) Powers and resources

The 1972 local government reform established a two-tier system of local government throughout England and Wales, based on the county and the district, which were administered by elected councils but with different arrangements for power-sharing between metropolitan and non-metropolitan areas. At the time, Greater London was also organised on a two-tier basis. In 1985, however, legislation abolished the Greater London Council and the councils of the six metropolitan counties. Since then there has been only one tier of local government in the major conurbations. This trend continued with the changes introduced in the 1990s, on the basis of the Local Government Act 1992 for England and special laws enacted in 1994 for Scotland and Wales. The purpose of this reform was to establish a single local authority (unitary council), on the basis of a redrawing of boundaries which was to remove the previously existing counties and districts. This reform, however, though fully

implemented in Wales and Scotland (the "regions" were abolished in Scotland and the counties in Wales; 29 unitary councils and three island councils set up in Scotland and 22 unitary councils in Wales), was only partially so in England, making the situation of some urban centres comparable to that of metropolitan districts.

As a result, local government in England now has one or two tiers depending on the region concerned. Two-tier government remains the rule in the shire areas (less urbanised regions), with 34 counties and 238 non-metropolitan districts, which share local authority functions in terms of service provision.

In London, a regional authority was set up in 2000 – the new Greater London Authority – which comprises the 32 London boroughs (and the City). The rest of England has only one tier of local government in the form of 36 district councils in metropolitan areas and 46 unitary councils in local authorities whose boundaries were newly drawn under the 1992 Act, mainly in the more built-up parts of the shire areas.

Altogether, the entire United Kingdom has only 468 "main" local authorities of all types, which, given its 58 million inhabitants, reflects a degree of local government concentration unparalleled in Europe.

The White Paper plans to extend the system of unitary councils to the shire areas; decisions should be taken in July 2007 on the basis of the proposals to be submitted at the beginning of the year; the two-tier structure should then become the exception and be coupled with mandatory co-operation between the two tiers.

It should nevertheless be pointed out that England still (on the basis of 1995 data, for lack of a more recent census) has 8,700 elected councils (and more than 71,000 councillors) with very limited powers, representing parishes (though some are called "town councils") and about 17 million inhabitants, outside the large cities where they have no equivalent; 80% of parishes have fewer than 2,500 inhabitants, but 5% have the status of towns and are larger in size; some of the parishes recently set up in urban areas have more than 40,000 inhabitants. However, these councils are always incorporated into the "main" authorities (districts and sometimes unitary councils). The communities in Welsh districts are comparable to parishes. The White Paper plans to reinforce these basic units: local authorities will be able to decide to create them (whereas a decision of the government and the Electoral Commission is

required at present); they will be able to delegate additional functions and budgets to these units, though this will not preclude support for other forms of community governance; and these units will be extended to London (§ 2.48 to 2.59).

In the United Kingdom, central government has not developed an executive administration at local level, with the exception of the Scottish and Welsh Offices, which disappeared with devolution. The ministries' regional departments were traditionally located in London. Only a few technical services were organised on a territorial basis (eg tax departments and the Planning Inspectorate). This situation began to change in 1994, when the Government Offices of the Regions (GOs) were set up in England's eight administrative regions and in Greater London; they initially combined the regional departments of four ministries, which have now risen to ten; originally placed under the authority of the large Department of the Environment, they now come under that of the Department for Communities and Local Government (DCLG). They represent the government and act as talking partners for local authorities and the Regional Development Agencies; they have to ensure that local communities' needs are actually met, which is reflected in their role of promoting better quality in local authority services. The GOs employ about 3,500 officials.

Other major area-based ministry field departments include the Pension Service (2,795 officials), the Planning Inspectorate (700 officials) and the Child Welfare Agency (10,419 officials). Their role is expected to expand as a result of the widespread use of Local Area Agreements announced by the White Paper (§ 5.1 to 5.15) and the reform of supervision which will require the GOs to co-operate more closely with the ministry and the inspectorates to improve local authority performance (§ 6.64 to 6.66).

The Regional Development Agencies are central government bodies set up to support regional economic development; the consultative Regional Chambers set up under the 1998 Regional Development Agencies Act are based on local authorities. The plan to set up elected regional assemblies in England seems to have been dropped after the failure of the referendum of 8 November 2004 on the establishment of a North East Regional Assembly. It is no longer mentioned in the White Paper. However, the Regional Chambers are now commonly known as regional assemblies and have the status of planning authorities for the purposes of the 2004 Planning and Compulsory Purchase Act.

There have been far-reaching changes in British local government institutions since 2000. The Local Government Act 2000 provided for local authorities to abandon the traditional system whereby executive functions were performed by council committees, to differentiate between executive and non-executive functions and, under certain circumstances, to hold a referendum on a draft local constitution which could include the direct election of the mayor. However, this reform did not receive the expected support. Only 31 of the 386 local authorities entitled to elect a mayor have held referenda of this kind to date, and the voters were in favour of directly electing the mayor in only 12 cases. In four out of five local authorities, councils opted for a collegiate executive with a leader elected by the council like the other members of the executive; very few councils opted for the members of the executive to be appointed by the leader, and still fewer for the leader to exercise powers of his or her own. The other authorities, generally the smallest, opted for keeping the traditional committee system, with a few changes. However, one feature of these reforms is the fact that residents can take the initiative in requesting a referendum on the introduction of a mayor by submitting a petition signed by 5% of the voters to their local authority. The White Paper (§ 3.15 to 3.28) plans to reactivate institutional reform. The law will offer local councils a choice of three models, all of which feature the appointment of a leader for a four-year term: a directly elected mayor, a directly elected collegiate executive or a leader elected by the council. In all three cases the leader will appoint his or her cabinet members and allocate portfolios; in the case of a directly elected executive, the leader's authority will derive from the fact that he or she has appointed the other members on his or her slate. It will also be possible to introduce whole council elections, with single-member constituencies, whereas councils are currently elected by halves or thirds, with multi-member constituencies. Where the executive is elected by the council, the latter will be able to force the leader's resignation by a vote of no confidence. These measures are designed to boost interest in local elections, which attract little more than a third of voters.

Local authorities are empowered to make byelaws for the exercise of their functions, insofar as they are authorised to do so by law (section 235 of the 1972 Act – the power to enact byelaws "for good rule and government and for suppression of nuisances", which amounts to a very broad authorisation) and by the provisions of various special laws and of government regulations (secondary legislation). Failing this they can still resort to the long-standing procedure of private bills to obtain such permission under a Local Act voted by Parliament. As sovereignty is vested in Parliament alone, local authorities can exercise only the powers conferred on them by law.

They also have substantial administrative resources, with about 2 million officials, a much greater number than the national civil service. However, these officials include 800,000 teachers, the majority of whom are now managed by schools themselves, under central government supervision, and can no longer really be regarded as local government officials.

Local authority measures are subject to judicial review.

But there are also other supervisory procedures. Byelaws have to be confirmed by the Secretary of State in order to come into force. In practice, central government draws up models, and a byelaw that significantly differs from the model has little chance of being confirmed; however, conformity to the model does not preclude judicial review in the event of an appeal to the courts.[18] The White Paper provides for an end to this formality (§ 3.14). Various special laws can grant the Secretary of State supervisory authority, the power to give prior authorisation (to take out loans), the power of approval or the power to decide in place of the local authority (eg in town-planning matters); above all, these laws set up inspectorates which monitor the standards of local authority service provision.

The trend over the past few years has on the whole been towards stricter supervision of local authorities, either directly, for instance through the local government audits conducted by the Audit Commission, which can also refer matters to the ordinary courts, or indirectly through procedures designed to promote improvements in public management (eg Best Value Inspection, which monitors all services in this respect). On the other hand, by improving their performance, local authorities, which have the status of Best Value

18. *R. v. Bristol City Council, ex p. McDonough,* [1993] Nov. C.L. 541.

Authorities and are required by the Local Government Act 1999 to secure continuous improvement in their performance, can obtain greater freedom of action, particularly in the use of the grants they receive. Best Value Performance Indicators are established by the various ministries in conjunction with the preparation of the annual budget. To this end, the Audit Commission (Audit Commission Act 1998) has to publish a report on its assessment of local authorities' performance and accordingly rank them in various categories determined by the Secretary of State (Local Government Act 2003, sections 99 and 100 in particular).

The White Paper plans to reform this system in order to strike a balance between performance scrutiny and local government responsibilities (§§6.33 to 6.71). The number of performance indicators should be reduced from 1,200 to approximately 200; local authorities' reporting obligations will be eased; performance scrutiny will focus on the priorities of the Local Area Agreement, on which the local authority must provide an annual report, which is part of the annual assessment by the Audit Commission and the inspectorates of the risks surrounding achievement of the objectives; it gives rise to an annual assessment meeting under the authority of the GO. The Audit Commission's role is to be strengthened in relation to that of the inspectorates, as is co-operation between the ministries, GOs and inspectorates. For each local authority, the Audit Commission issues recommendations for improving performance (Direction of Travel Judgment) and, since 2005, a Use of Resources Judgment. The range of measures that central government can take if the situation deteriorates and is not put right will be improved; these measures can extend to directions by the Secretary of State and dismissal of the local executive. However, performance assessment will be redefined: in future it will be a Comprehensive Area Assessment covering the area's entire situation rather than specific services. The growth of contractual arrangements and the new perspective on assessment reflect an intention to assign more importance to local areas in local government.

As regards finance, local public expenditure accounts for about 10% of GDP and 26% of total public expenditure. Own taxation currently accounts for only 16% of total resources, given that it is confined to the council tax, while revenue from the uniform business rate now amounts to a transfer, since the tax yield is collected at national level and redistributed among local authorities according to the number of inhabitants (13% of total resources). Conversely, the block grant, which is based on estimated needs under a complex system of indicators taking account of own resources, ensures a substantial degree of

financial equalisation between local authorities. Parish councils account for less than 1% of local public expenditure; they are financed by a small share of the council tax yield and revenue from certain services.

The Local Government Act 2003 also introduces the possibility of levying a temporary surtax payable for a given period (no more than five years) by all or a class of non-domestic ratepayers to carry out projects designed to improve development conditions in a Business Improvement District (BID) or for those living, working or pursuing an activity there. This BID levy is introduced only with the consent of the majority of those who will be liable to it (LGA 2003, Part IV, sections 41 ff). By the end of 2006 there were 31 BIDs (White Paper, § 4.31).

2) Functions

The powers and functions exercised by local authorities are conferred on them by law. Any measure taken outside these limits is *ultra vires* and therefore illegal. This traditional principle, which was confirmed by the 1972 Act, stems from the principle of the sovereignty of Parliament. It has been eased in various ways, first by the 1972 Act itself, which allows local authorities to do anything which, to a reasonable extent, facilitates or is conducive to the discharge of their functions (section 111).

Secondly – and above all – the Local Government Act 2000 (and the equivalent Scottish legislation in Scotland) empowers all local authorities to do anything which they consider likely to promote "the economic, social and environmental well-being" of their area (section 2). To this end they can incur expenditure, give assistance to any person, enter into agreements, co-operate with any person, act on behalf of any person and provide goods and services to any person. These new powers cannot be interpreted as enabling them to do anything which the law prohibits them from doing or to raise capital (section 3). However, the courts have given a fairly broad interpretation of these new local authority powers (known as well–being powers).

Local authorities cannot delegate a function conferred on them by law to a third party unless the law itself empowers them to do so. The 1972 Act thus provides that certain functions can be exercised by committees or by another authority (section 101). Over the past few decades, numerous special laws have also introduced or imposed the delegation of tasks: for example, the construction and management of low-cost housing is no longer the direct

responsibility of councils, but that of non-profit housing associations, which are the only bodies entitled to exercise this function – a rule introduced in 1987. Since 1981, several laws have gradually compelled local authorities to involve their own departments in compulsory competitive tendering, which is open to private firms. However, since the Local Government Act 1999, this last procedure has been replaced by the obligation to seek continuous improvement in the efficiency and effectiveness of their performance, pursuing the best possible options. The method is summed up in four words: challenge, consultation, comparison, competition. Lastly, other laws facilitate partnerships between local authorities and other authorities; examples include the Health Act 1999, which enables local authorities to delegate certain functions to National Health Service bodies.

Since the 1980s a series of reforms have whittled away local authority functions, handing them over to the market and to central government or bodies under government authority. The laws which have compelled local authorities to turn to the private sector are based on the idea that they must take responsibility for determining services, but without directly supplying or producing them. For example, county councils have lost the task of organising and co-ordinating public transport; county councils, and other local authorities where appropriate, are now simply obliged to identify needs that are not met by the private sector and issue a call for tendering to provide a subsidised service. The transport committees which still ran bus services have had to hand them over to private firms or sell them. However, the White Paper plans to restore some of these functions to local authorities in order to ensure a more coherent approach; transport is one field in which Multi-Area Agreements can be concluded. In education, local authorities have lost most of their powers to schools, which enjoy greater autonomy, and central government, which now draws up curricula and monitors and assesses schools.

Although the British system is customarily described as drawing a clear-cut distinction between national and local policy, which undoubtedly continues to be the case in terms of policy–makers and their staff, both the development of the welfare state and the policies giving private firms a greater share in local public services have resulted in central government intervention which has introduced power-sharing and mandatory co-operation between local authorities and central government in key sectors.

As regards spatial planning, local authorities (in this instance district councils, unitary councils, national park authorities and – for mines and waste – county

councils) are responsible for preparing the local development documents. According to the Planning and Compulsory Purchase Act 2004, each local authority must adopt a Local Development Scheme (LDS) which specifies inter alia which documents are local development documents, what their subject matter and geographical scope are and which of these documents will be development plan documents (section 15). Each authority thus has a certain amount of leeway when it comes to the make-up of the local development scheme, according to its statutory functions and its choices. The LDS takes the form of a "portfolio" comprising all the documents which together form the local authority's spatial planning strategy. These include both the development plan documents – which are part of the development plan for this area – and a number of additional planning documents. All of them have to be in general conformity with the regional spatial strategy (RSS) (section 24) or, in London, the spatial development strategy, and take account of other policies and documents listed in the act (section 19(2)). Taken as a whole, the local planning documents set out the local authority's policies on development and land use (section 17).

The regional planning bodies are chiefly responsible for preparing the draft revision of regional spatial strategies. Elsewhere than in London, the regional planning bodies are regional chambers (known as regional assemblies) at least 60% of whose members are representatives of the region's local authorities (section 2: the Secretary of State decides on the basis of this criterion). The Secretary of State may subject draft revisions to an examination in public if their extent so warrants; he or she then publishes the revision with the changes opted for and a statement of the reasons for them. The Secretary of State can influence the content of the draft revision in various ways: the regional planning body must carry out the policies stated by the Secretary of State; the latter may also prescribe the subject matter of the revision of the development strategy of a given region, or order the revision of a regional strategy, and so on (sections 1 and 5-10). In London, the Mayor of London is responsible for preparing and publishing the spatial development strategy, which is also subjected to an independent examination. So elsewhere than in London, this procedure involves co-operation between the region's local authorities and central government. Following the 2006 report on the government of Greater London, a bill has been tabled to broaden the mayor's and Greater London Assembly's responsibilities in the areas of housing, training, waste, culture, sport, health, energy and climate change.

The development plan is also subject to central government supervision, but local authorities have a procedural safeguard insofar as the Secretary of State subjects all the draft development plan documents to an independent examination, which takes the form of a public examination in which any person seeking to change a document must be heard (section 20). The Secretary of State can request a change to a draft document and the local authority cannot adopt the document until these changes have been introduced (section 21).

The development plan is the starting point for consideration of any request for planning permission, and the framework in which planning permission is granted. Development plans are not directly binding in respect of planning permission; the local authority has to take account of all "relevant considerations". Local authorities may resort to expropriation, subject to compensation.

An appeal may be lodged with the Deputy Prime Minister (First Secretary of State) if the decision is delayed too long, or if planning permission is refused, or if the accompanying requirements are disputed. The independent Planning Inspectorate examines appeals on behalf of the Secretary of State. It also conducts public examinations when local authorities prepare the documents for a new development plan (see above). The First Secretary of State is also empowered to decide on major requests for planning permission in place of the local authority, when "good planning" considerations so warrant.

Local authorities have a share in policing functions through the local police authorities. These authorities are responsible for ensuring the presence of effective and efficient police forces throughout the country. Their task is to determine the strategy for the use of police forces in their district and to ensure that the police chief reports to the local community.

Most police authorities have 17 members: nine local elected representatives, five independent personalities and three magistrates. Local police authorities are funded by the Home Office on the basis of a formula which attempts to integrate indicators for police service requirements. But these funds are allocated directly to the police authority without appearing in the local authority budget, except in the case of Greater London. Local police authorities can also levy a supplement to the council tax if they consider this funding insufficient, and they draw up their own budgets.

Education has traditionally been in the hands of local authorities in the United Kingdom. The reforms carried out since the late 1980s have redistributed functions between local authorities, schools and the Department for Education and Skills. These local authorities are county councils or unitary councils, as the case may be, and in London the London boroughs. Local authorities own 80% of state-funded schools, but also the playing fields of voluntary aided schools, which form the great majority of the remaining 20%. Local authorities are therefore responsible for the management and infrastructure of these schools, for planning and carrying out the main investments in terms of construction, reconstruction and major repairs, and for maintenance. As a rule, however, repairs and maintenance are now delegated to the school administration, which receives an annual grant for the purpose. Local authorities and the other parties concerned have to determine investment priorities under the asset management plan.

The Department for Education and Skills draws up curricula with the Qualifications and Curriculum Authority. It provides most of the funding, on the basis of the number of pupils. It is left to local authorities and schools to determine investment priorities.

Schools are responsible for their results and those of their pupils, but local authorities are obliged to support state-funded schools by setting them objectives in line with national objectives and taking local steps to promote the implementation of programmes such as the Literacy and Numeracy Strategies, which were introduced in all primary schools in 1998. In theory, a local authority intervenes in the running of a school only if the latter has not achieved its objectives.

However, local authorities do not have the same powers in respect of all the categories of schools provided for in the Education Act 1996. Where community schools – the majority – are concerned, local authorities still exercise their traditional powers: they own the buildings, deal with admissions and employ teaching and non–teaching staff. Where foundation schools are concerned, on the other hand, the school is the employer and deals with admissions; it may own the buildings, unless they belong to a non-profit body. Where voluntary schools are concerned, the local authority is the employer and deals with admissions, but the buildings and land normally belong to a non-profit body, except playing fields, which belong to the local authority (in the case of voluntary controlled schools). In voluntary aided schools the local authority retains responsibility only for repairs and maintenance, whose

conduct is nevertheless delegated to the school. Local authorities supervise these schools' investment and siting decisions and manage the investment funds allocated to the schools by the Department for Education and Skills. The 1996 Act has quite substantially strengthened local authorities' role in the education system by comparison with previous years.

All new measures concerning school organisation at local level (including the building of a new school) require an open consultation procedure to be completed before any local authority decision is taken, unless objections are raised, in which case the decision is referred to a local school organisation committee comprising representatives of the councils, churches, teachers and Learning and Skills Council; if the committee cannot reach an agreement, the decision is referred to the Schools Adjudicator, a kind of independent local authority. However, the final decision to build a new school is taken by the minister.

Local authorities administer housing benefit and council tax benefits for low-income households, and rule on complaints. The Department for Work and Pensions is responsible for regulations and their application, sets the performance standards to be met by local authorities, encourages benchmarking and comparison of results with national standards, and provides local authorities with a self-assessment tool. It can grant them financial assistance to improve their management. It monitors the management of benefits through the Benefit Fraud Inspectorate; on the basis of a report by the Inspectorate, the minister may recommend that the local authority take steps to improve management or even, in the most serious cases, order the local authority to take such steps (Social Security Administration Act 1992). Social welfare benefits are uniform. Local authorities have powers of their own over benefit amounts in a few cases only, such as housing benefit where a shortfall remains between capacity and benefits.

Local authority functions in the areas of waste and public transport chiefly concern the adoption of byelaws, the choice of management method and the organisation of competitive tendering for service providers.

Since 1990, local authorities have had to set up enterprises to deal with waste, but they are also obliged to subject them to competitive tendering. They then monitor the functioning of the service on the basis of performance indicators (of which there are five in this sector) and stated objectives. Part of the overall grant is earmarked for waste collection and disposal and for local authorities'

regulatory functions in this area. However, local authorities are not empowered by law to make users pay a specific charge for this service. A reform is under consideration with a view to introducing rates for the service.

As regards public transport by road, bus services elsewhere than in London are provided on a commercial basis. Local authorities are responsible for determining the services that will receive public financial support. In London, the elected mayor and Transport for London, which reports to him, are responsible for bus services. The Secretary of State gives directions and makes recommendations to local authorities, particularly on applying the legislation in force and developing consultation of users and other parties concerned. Various bodies produce performance assessments of local authority transport services and infrastructure, according to the different modes of transport and communication. The White Paper provides for some powers in this area to be restored to local authorities (see above).

Other major local government functions include firefighting and civil protection; economic development (subject to an expenditure ceiling); public hygiene, libraries, museums and other cultural facilities, and sporting and leisure amenities.

Overall, the extent of local authority functions in England may be said to have been particularly affected by public management trends and the drive to improve efficiency.

Some services or functions often dealt with by local authorities in other European countries are not included among the functions of British local authorities: water and sewage (except in Scotland), and gas and electricity supply.

Lastly, it should be pointed out that the role of local councils (parish, town and in Wales, community councils) is currently being reconsidered. These councils are already active in representing residents in town-planning procedures and environmental protection matters, and they run a number of minor services. In a report issued in 1998 the Audit Commission considered the possibility that local authorities might retain responsibility for financing and basic standards and leave the running of more services to local councils, so as to take account of local preferences and if necessary raise additional revenue. The recent reforms have not gone that far. The report entitled “Citizen Engagement and Public Services: Why Neighbourhoods Matter” resulted in an expansion of the

role of parish councils in order to encourage residents' participation. The Quality Parish Scheme introduced in 2003 aims to promote parish councils' activities. It has enabled parish councils to take over service functions which were traditionally exercised at district or county level and which substantially affect residents' lives.

The new Clean Neighbourhoods and Environment Act 2005 (c.16) extends parish and town councils' powers to enable them to fix penalties for litter, graffiti, fly-posting and dog control offences. The White Paper (§ 2.48 to 2.59) plans to make it easier to create parishes and communities by conferring this power on district and unitary councils and ending the current requirement of a decision by the government and the Electoral Commission; this facility would also be extended to London. District and unitary councils could also delegate more tasks to parish and community councils, together with the corresponding budget management. These measures do not preclude other forms of participation – or community governance – for the management of various amenities.

Lastly, contractual arrangements were introduced in 2004 to cover relations between central government and local authorities. Support schemes for urban development and the rehabilitation of rundown urban areas have largely drawn on partnerships requiring local agreements in order to receive government financial support. Local Strategic Partnerships have come into widespread use and now number 360; in future, local authorities will have to assume a leading role over the other public and private partners involved. In 2004 Local Area Agreements were also introduced in order to "strike a balance between the priorities of central government and local governments and their partners in the way that area-based funding was used" (§ 5.34). The White Paper plans to bring Local Area Agreements into general use and give them a statutory basis; they would become a duty for local authorities and a source of commitments for the signatories, particularly for all the local partners involved. The LAAs would then form the central delivery contract between central government and the local authority and its partners (§ 5.35). In future they should focus on a relatively small number of priorities (35, under four headings: children and youth; health and old people; safety; economic development) and form the core of the Sustainable Community Strategy. But LAA funding should take the form of general grants rather than being divided into four distinct budget "blocks" as in recent years. Commitments reflecting national priorities agreed with the government could be the subject of government directions to the lead local authority or any specified partner for the tasks for which they are

responsible (§ 5.41 to 5.43). LAAs can be negotiated at district, unitary council or county council level, and Multi-Area Agreements – contracts including neighbouring areas – can also be concluded in some fields.

IX. Sweden

Sweden is a unitary state whose administrative organisation has two salient features. The first is the state administration, which is organised into national agencies (*ämbetsverken*) placed under the authority of the government but not of the minister; it also includes field departments at county level. The second feature is the extent of municipalities' powers and functions and the amount of their budgets. Together with this devolution, however, local authorities have to implement a number of national policies in the exercise of their powers and functions.

1) Powers and resources

Sweden has two tiers of local government: the 290 municipalities (*kommuner*) and the 20 county councils (*landsting*). The country is divided into 21 counties (*län*), which are the seat of a state administration (*länsstyrelse*) placed under the authority of a government-appointed governor (*landshövding*). The division into provinces established in 1634 was not altered until 1997, when the counties of Malmöhus and Kristianstad merged to form the new county of Skåne, and 1998, when the counties of Göteborg, Bohus, Älvsborg and Skaraborg, except the towns of Habo and Mullsjö, merged to form the county of Västra-Götaland. The new councils were elected by direct suffrage for the first time in September 1998. As of the beginning of 1999, this also put an end to the special rules governing the city of Malmö, which ceased to act as a county council and was incorporated into the county of Skåne. On the other hand, the island of Gotland is a municipality whose council also acts as a county council.

Sweden's current municipal system is the outcome of the territorial reforms of 1952 and 1962-1974, which formed large municipalities in order to develop the services they were to provide to the population; the reform of education, which was to be managed by the municipalities, played a decisive part in this reorganisation. Previously, municipalities still coincided with the traditional parishes, whose number has changed little since then (approximately 2,500).

The municipalities' "co-operation bodies" (*samverkansorgan*) set up at county level to exercise various spatial planning functions, in particular, under Act No. 2002:34 of 7 February 2002 are an alternative to the merging of counties, which was tried out in the 1990s. They amount to a form of regionalisation ensuring that municipalities continue to rank first in Sweden's political and

administrative system. The "co-operation body" (§ 1 and 2) is a deliberative body formed by the county's municipalities, and deals with regional development tasks. It comprises all the county's municipalities and can also include the county council; however, this is not mandatory, unlike the regional union tried out under Act No. 1996:1415 in the counties of Kalmar and, briefly, Skåne. The municipality of Gotland is also regarded as a co-operation body within the meaning of the new law. A co-operation body stems from the joint initiative of all the municipalities in a county; it is set up by the government, to which this initiative is referred; it can therefore be established in any county (except those where the experiment is in progress). It has to co-operate with the municipalities, the county council and the representatives of the relevant economic organisations (§ 6 and 7). The law does not determine how this "co-operation body" should be organised, which leaves the municipalities considerable freedom of action. It also provides for the co-operation body to be dissolved at its own request or if a municipality withdraws (§ 9).

Another form of regionalisation based on the merging of counties is still on the agenda, however, especially since the Danish reform came into force on 1 January 2007.

The state's county administration and the governor perform a general function, providing expertise and co-ordination together with supervision. The regional departments of several national government agencies have been reorganised in the counties to ensure better co-ordination at this level; in the past, some were incorporated into the state's county administration, while others subsequently became autonomous as a result of rationalisation measures: the new police agency – *Rijkspolistyrelse* – has its own regional departments; in 2003 the tax administration was separated from the county administration and reorganised into eight regions; the roads administration is organised into eight regions and the water administration is being reorganised into five regions. A recent report recommends reinforcing the governor's and county administration's co-ordinating role and their co-operation with the national authorities.[19]

The governor is assisted by a county administrative board, which he or she chairs. The board was opened up to local interests insofar as its 14 other

19. *Det ofullständiga pusslet. Bhovet av att utveckla den ekonomiska styrningen och samordningen när det gäller länsstyrelserna* (The imperfect puzzle. The need to develop economic management and co-ordination by county administrations), Report on the survey of counties, SOU 2004:14, see in particular pp. 97 ff and Appendix 5.

members were to be elected by the county council. Since 2003, however, all the board's members (a maximum of 12) have been government-appointed, even if they are local elected representatives, in order to reassert the independence of state representation and its focus on national interests. The board, which formally holds the county administration's powers, is no longer a real decision-making body but simply a forum for information and discussion, which meets three or four times a year. The governor, who is appointed for six years, usually among political figures, is the real decision-maker and delegates the exercise of his or her powers to the deputy governor, a civil servant.[20]

Municipal councils and county councils are elected for four years by proportional representation, on the same day as parliament. The council adopts the budget and determines the rate of local income tax, forms committees to which it can delegate some of its functions, takes decisions on the administrative organisation of the municipality or county and adopts the byelaws required to carry out its functions.

Executive functions are shared between the executive committee, which is elected for four years by the municipal or county council, and specialist committees which share out the various functions and to which the council can delegate some of its tasks. The executive committee directly performs the tasks that the council has not delegated to specialist committees.

General supervision of local authority measures is exercised by the administrative court pursuant to an appeal by a council member. Local authorities are also subject to supervision by the ombudsman, in the same way as national authorities are, but this form of supervision is more detailed where local authorities' mandatory powers (or duties) are concerned.

20. See Decree 2002:864 on county administrative boards, of 21 November 2002 (*Förordning 2002:864 med länsstyrelseinstruktion*). The decree specifies that the governor is the "head" of the county administrative board (§ 10).

The state does not specifically supervise financial management; this is done by auditors whom the council elects from among its members. The auditing of local finances was reformed in 2000, then in 2006, when local elected representatives' supervision of professional auditors was reinforced; these auditors can scrutinise everything but must target their audits on the basis of the guidelines given to them by local elected representatives.

In addition, local authority decisions can be appealed before the administrative courts by the persons to whom they are addressed. This only concerns individual measures taken under the legislation regulating local authority duties. In such cases, the administrative courts have broader powers which enable them to review not only the legality but also the substance of the impugned decision, and to alter the decision. This form of judicial review has grown in recent years. Local authority residents can also apply to the administrative courts to set aside a local authority's final decision on the grounds that it is illegal; they must lodge these applications within three weeks of the date on which they were notified of the decision.

In practice, however, the main forms of supervision are those relating to the application of national legislation, which for a long time was based on the specialist committees that local councils were required by law to set up.

The chief measure introduced by the 1991 Local Government Act was precisely to strengthen the role of the executive committee and its chair and to allow councils to freely determine the organisation and functions of their specialist committees. These committees can also delegate some of their tasks to sub-committees or even to some of their members. The 1991 Act stems from the "free municipality" policy undertaken in 1983 in order to try out local management freed from the administrative restrictions imposed by national legislation and regulations (but only as regards local authorities' internal administrative organisation).[21]

Before 1991, municipal organisation was based on the municipal executive committee (*kommunstyrelse*) and a series of specialist executive committees, the most important of which were established by law and performed statutory tasks. The members of these committees were elected by the municipal council

21. On this policy, see: G. Marcou (2004) "Expérimentation et collectivités locales: expériences européennes", especially pp. 49 ff. in: Ministère de l'Intérieur, *Les collectivités locales et l'expérimentation: perspectives nationales et européennes*, Paris, La Documentation française.

from among eligible citizens; most of these were chosen from outside the assembly, as is still the case today; and the same applies to the county council committees. The statutory specialist committees at municipal level included: the education committee (*skolstyrelse*), the committee for the protection of public health and environment (m*iljö-och halsoskyddsnämnd*), the building committee (*byggsnadsnämnd*), the social services committee (*socialnämnd*) and the elections committee (*valnämnd*). There was a similar system at county level, where the main specialist executive committee was the health-care committee; other mandatory committees were the dental care committee, the social services and mental health committee and the education committee. Other mandatory executive committees were provided for by special legislation, which nevertheless allowed their tasks to be performed by other existing committees or by the municipal executive committee. Each specialist committee was matched by a municipal administrative department, which it headed.

The council was free to set up other specialist committees to exercise its other functions (eg roads, culture and municipal property). The municipal executive committee was empowered to give general directions to the specialist executive committees and co-ordinate and supervise their work, particularly in budgetary matters, but it could not interfere with a mandatory executive committee's performance of its statutory tasks. On the contrary, these tasks were supervised by the national agency responsible for the application of the special legislation concerned.

The 1991 reform severed the vertical tie between the national agencies and the municipal and county councils' specialist committees. But the implementation of national policies and legislation continues to be supervised through direct relations between the agencies and local authorities, although monitoring methods have changed and are now more closely geared to assessing results in terms of objectives.

The same applies to financial matters. Overall, local public expenditure accounts for more than 24% of GDP, and county councils account for 29% of this expenditure. Both county councils and municipalities enjoy considerable financial autonomy; they derive the majority of their resources from local income tax (71% in counties), and set the rate of this tax. However, parliament has been able to control local finance by deciding to temporarily freeze local taxes, by manipulating the tax bases or by temporarily blocking tax rates.

Before 1991, although proportional income tax had for a long time been local authorities' main resource, budget transfers played an important part in funding basic services as required by the regulations. Most of the transfers were earmarked grants (more than a hundred, mainly for health services, education and child welfare, and for refugee reception etc).

In 1991 many earmarked grants were abolished and this was offset by the introduction of a tax equalisation grant. Earmarked grants accounted for three quarters of state grants in 1990, but only a quarter in 1999. Only the equalisation grant was of a general nature and entirely free for local authorities to use as they wished.[22] However, earmarked grants remain an important tool for policy implementation and new ones were soon created. The number of grants rose from 62 in 1993-94 to 92 in 1997, then to 127 in 2001, and in 2003 the aggregate amount of earmarked grants was estimated at 35 to 40 billion Swedish kroner (SEK).[23]

A recent report on the subject by the *Statskontoret* (the Swedish Auditor General's Department) estimates, on the basis of a new classification of grants according to their characteristics, that there are 53 grants actually linked to the activity of municipalities and county councils, which amounted to 21.2 billion SEK in 2001.[24] In any event, financial leverage clearly continues to play an important part in the implementation of national policies.

2) Functions

According to the standard pattern produced by the development of welfare state functions since the 1930s, the Swedish system of local government has

22. Roger Pettersson, "State budget support to local government in Sweden", especially pp. 101 in: G. Marcou ed. *State budget support to local governments*, Paris, OECD, SIGMA Programme, 1994; S. Sören Häggroth, "Deregulation and decentralization: ten years' experience with home rule in Sweden", *International Journal of Public Administration*, 1994, vol. 17, No. 10, pp. 1863; Council of Europe, *Progress achieved within the framework of the monitoring procedure on local democracy*, document CM/Monitor(2001)3 Add.rev.2, compiled by G. Marcou, April 2001, table 4, p. 28.

23. Source: conversation at the Ministry of Finance, Stockholm, 5 July 2004.

24. Statskontoret, *Statsbidragen till kommuner och landsting. En kartläggning och analys* (State contributions to municipalities and county councils. Survey and analysis), 2003:5, particularly pp. 93-96. In 2001 municipalities and county councils received 359.4 billion SEK in tax revenue and 125 billion in state transfers (Ministry of Finance, *Budget statement and summary from the 2004 spring fiscal policy bill,* Stockholm, pp. 34 and 36).

been described as a system tending to integrate national and local authorities through welfare state policies (F. Kjellberg).[25] Management of the ensuing new functions was regularly assigned by law to local authorities – municipalities and county councils. The growth of public expenditure was primarily reflected in local authority budgets, and the reforms of Sweden's local government system met the need to adapt local authorities' boundaries and capacities to the functions they were required to perform. The 1952 reform, which chiefly affected rural municipalities, was intended in particular to enable all municipalities to take over the management of social services; the reform carried out from 1962 to 1974 was a response to the need for school reform. The number of municipalities was virtually divided by ten.[26] The extent of municipalities' and county councils' functions is reflected in their expenditure, which exceeds 24% of GDP, and in the number of staff they employ, since in 1998 municipalities employed 21% of the working population and county councils 6%; 51% of these officials worked in social and health-care services and 22% in the education system.[27]

In the past, the municipalities' remit was as broad as the administrative functions of the time required, but since the 1950s it has been considerably expanded, together with that of the county councils; this has changed its nature because most of the new state functions are now taken over and exercised by local authorities. The social and political importance of these functions was bound to call for increased central government supervision, in both administrative and financial terms, although this supervision was substantially reduced and assumed a different nature in the wake of the 1991 reform.

Both municipalities and county councils are covered by the statutory general competence clause. But the classification of local authority functions is based on the distinction between mandatory and voluntary powers (functions). Mandatory powers, or duties, are the largest in number and account for the great majority of local public expenditure. Optional expenditure is less substantial, but regarded as typical of local self-government. Duties are regulated by law, but also by the instructions published by the national

25. F. Kjellberg, "Local government and the welfare state reorganisation in Scandinavia", especially pp. 48 ff. in: B. Dente/F. Kjellberg (eds) *The dynamics of institutional change. Local government reorganization in Western democracies*, London, SAGE, 1988.

26. 2,498 municipalities in 1951 and 278 in 1974 (the number has increased slightly since then). See Sören Häggroth/Kai Kronvall/Curt Riberdahl/Karin Rudebeck, *Local government in Sweden. Traditions and reform,* The Swedish Institute, Stockholm, 3rd ed. 1999, pp. 14 ff.

27. Swedish Institute, October 1999.

agencies and indirectly by the assessments they carry out. These duties underpin rights which citizens can enforce before the administrative courts. Voluntary powers (functions), on the other hand, are free and are not coupled with rights, except the right to respect for the law and for the principle of equality.

The municipalities are chiefly responsible for education and social services. In 2002 expenditure on education amounted to almost 30% of total municipal expenditure, together with 12% on pre-school education and services for schoolchildren. The second item of expenditure was services for the elderly (20%), followed by services for people with disabilities (almost 10%). Economic development activities accounted for almost 6% of expenditure, and various activities, mainly reflecting voluntary powers, for 15 to 16%. The distinctive feature of these functions is their high staff costs. Swedish municipalities employ more than 10% of the working population, three quarters of them in the education and social services sectors.

Although the county councils (not to be confused with the county administrative boards), like the municipalities, have general competence in their geographical area and within the statutory limits, they exercise only limited albeit essential functions. Most local functions are performed by the municipalities.

The county councils are chiefly responsible for hospitals and the health-care system (about 80% of their expenditure), for drawing up a regional plan (which is required only in Stockholm, however; in the other counties it is drawn up only if the municipalities so request), and for intercity transport. They are also responsible for a number of educational and cultural establishments. On the whole, regional development remains a responsibility of the state, exercised at local level by the governor and the state's county administration. The same applies to protection of the environment and water resources and to infrastructure planning. However, in the two large southern counties which were formed by the merging of former counties and have acquired a regional dimension, planning and regional development policy (and management of the corresponding funds) have been transferred to the county council; that is also the purpose of the regional co-operation bodies which it has been possible to set up at county level since 2003.