

41st SESSION

Report
CG(2021)41-07final
22 September 2021

Monitoring of the application of the European Charter of Local Self-Government in Spain

Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (*Monitoring Committee*)

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Summary

This report follows the third monitoring visit, carried out remotely, in Spain since the country ratified the European Charter of Local Self-Government in 1988.

The report notes that Spain is generally fulfilling its obligations with regards to the Charter and municipalities are at the core of Spanish democracy. The Charter is incorporated under Spain's national law, enabling legal interpretation by the domestic courts. Moreover, local authorities can directly challenge laws or regulations passed by State and autonomous communities that adversely affect the constitutionally guaranteed local autonomy.

Nevertheless, the division of responsibilities between levels of government has not been clarified, and the general competence clause of municipalities has been narrowed to limited matters and subjected to several conditions. Also, the report notes the persistence of the transfer of powers to municipalities without adequate financial resources. Furthermore, the difficulties of management of small municipalities and the insufficient financial equalisation procedures or equivalent measures to correct the effects of the unequal distribution of financial resources between smaller and larger municipalities have not been solved.

Therefore, it is recommended that the Spanish government grant full discretion to local authorities to exercise their initiative in any matter which is not excluded from their competence nor assigned to any other authority. National authorities are invited to clarify the division of responsibilities among levels of government, whilst providing an appropriate legal framework and institutional settings for consultation of local authorities. The recommendation also invites Spanish authorities to ensure that each transfer of powers to local authorities is accompanied by adequate financial resources along with greater management support for smaller municipalities. Finally, the government is encouraged to sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

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

RECOMMENDATION 465²

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

a. Article 2, paragraph 1.b, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1 relating to the Congress, stipulating that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 1, paragraph 3, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1 relating to the Congress, stipulating that “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure the effective implementation of the principles of the European Charter of Local Self-Government.”

c. Chapter XVIII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;

d. the Congress priorities set up for 2021-2026, in particular priority 6b that concerns the quality of representative democracy and citizen participation;

e. the Sustainable Development Goals (SDG) of the United Nations 2030 Agenda for Sustainable Development, in particular Goals 11 on sustainable cities and communities and 16 on peace, justice and strong institutions;

f. the Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;

g. Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, adopted on 21 March 2018;

h. Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities' activities, adopted on 4 April 2019;

i. the previous Congress recommendation on the monitoring of the European Charter of Local Self-Government in Spain [Recommendation 336 (2013)]

j. the explanatory memorandum on the monitoring of the European Charter of Local Self-Government in Spain;

k. the contemporary commentary on the explanatory report to the European Charter of Local Self-Government adopted by the Congress Statutory Forum on 7 December 2020.

2. The Congress recalls that:

a. Spain joined the Council of Europe on 24 November 1977, signed the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter") on 15 October 1985 and ratified it on 20 January 1988, with entry into force on 1 March 1989. The instrument of ratification included a declaration, according to which “The Kingdom of Spain declares that the European Charter of Local Self-Government will be applied throughout the territory of the State in relation to the entities contemplated in the Spanish legislation of local government and provided for in articles 140 and 141 of the Constitution. However, the Kingdom of Spain does not consider itself bound by paragraph 2 of Article 3 of the Charter to the extent that the system of direct suffrage foreseen therein should be implemented in all local authorities falling within the scope of the Charter”.

² Debated and adopted by the Congress on 26 October 2021, 1st sitting (see Document [CG\(2021\)41-07](#), explanatory memorandum), co-rapporteurs Bryony RUDKIN, United Kingdom (L, SOC/G/PD) and David ERAY, Switzerland (R, EPP/CCE).

b. The Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (hereinafter referred to as Monitoring Committee) decided to examine the situation of local and regional democracy in Spain in the light of the Charter. It instructed Ms Bryony RUDKIN United Kingdom (L, SOC/G/PD) and Mr David ERAY, Switzerland (R, EPP/CCE), with the task of preparing and submitting to the Congress a report on the implementation of the Charter in Spain. The delegation was assisted by Prof. Tania GROPPi, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat;

c. Monitoring meetings took place from 18-20 May 2021 remotely. The Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the remote monitoring is appended to the explanatory memorandum;

3. The co-rapporteurs wish to thank the Permanent Representation of Spain to the Council of Europe and all those whom they spoke to during the remote meetings for their assistance.

4. The Congress notes with satisfaction that:

a. Spain is generally fulfilling its obligations with regard to the Charter;

b. the Charter is incorporated into Spain's national law, which enables legal interpretation by the domestic courts;

c. local authorities are enabled to directly challenge laws or regulations passed by State and Autonomous Communities which adversely affect the constitutionally guaranteed local autonomy;

d. a regular working relationship between the Central Government and the FEMP is in place and a wide variety of instruments for co-operation between the regional governments and local authorities does exist;

e. legislation has been revised in order to fix a minimum and maximum threshold for remunerating local elected officials in accordance with Article 7.2 of the Charter;

f. the right of the citizens to participate in local affairs is fully guaranteed.

5. The Congress expresses its concerns on the following issues:

a. the division of responsibilities between levels of government has not been clarified;

b. the general competence clause of municipalities has been narrowed to limited matters and subjected to several conditions;

c. the participation of the FEMP to the Conference of Presidents of Autonomous Communities and to the Sectorial Conferences is not defined in law;

d. the transfer of powers to municipalities without adequate financial resources persists;

e. the difficulties of management of small municipalities and the insufficient financial equalisation procedures or equivalent measures to correct the effects of the unequal distribution of financial resources between smaller and larger municipalities have not been solved;

f. Spain has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

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

a. grant local authorities full discretion to exercise their initiative in any matter which is not excluded from their competence nor assigned to any other authority;

b. clarify the division of responsibilities among the levels of government;

c. provide an appropriate legal framework and institutional settings for consultation of local authorities;

d. ensure that, in accordance with the legislation, each transfer of powers to local authorities is guaranteed by adequate financial resources;

e. ensure smaller municipalities greater management support and ensure a system of equalisation between municipalities, in order to transfer resources from richer to poorer;

f. remove, as regards municipalities, the limitation with respect to the Article 3.2 of the Charter, which is part of the declaration included in the instrument of ratification;

g. sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

7. The Congress calls on the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take account of this recommendation on the monitoring of the European Charter of Local Self-Government in Spain and its explanatory memorandum in their activities relating to this member State.

EXPLANATORY MEMORANDUM

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1. INTRODUCTION: AIM AND SCOPE OF THE VISIT, TERMS OF REFERENCE

1. Pursuant to Article 2, paragraph 3 of Statutory Resolution (2015) 9 of the Council of Europe Committee of Ministers, the Congress of Local and Regional Authorities (hereinafter referred to as “the Congress”) regularly prepares reports on the State of local and regional democracy in all Council of Europe member States.

2. Spain is one of the parties to the European Charter of Local Self-Government (ETS No. 122, hereinafter “the Charter”). Concretely, Spain joined the Council of Europe on 24 November 1977, signed the Charter on 15 October 1985 and ratified it, according to the procedure established by Article 94.1 of the Spanish Constitution, on 20 January 1988, with entry into force on 1st of March 1989. The instrument of ratification included a declaration, according to which “The Kingdom of Spain declares that the European Charter of Local Self-Government will be applied throughout the territory of the State in relation to the entities contemplated in the Spanish legislation of local government and provided for in Articles 140 and 141 of the Constitution. However, the Kingdom of Spain does not consider itself bound by paragraph 2 of Article 3 of the Charter to the extent that the system of direct suffrage foreseen therein should be implemented in all local authorities falling within the scope of the Charter”³.

3. Spain has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

4. The Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (hereinafter referred to as Monitoring Committee) decided to examine the situation of local and regional democracy in Spain in the light of the Charter. It instructed Ms Bryony RUDKIN, United Kingdom (L, SOC/G/PD) and Mr David ERAY, Switzerland (R, PPE/CCE), with the task of preparing and submitting to the Congress a report on the implementation of the Charter in Spain. The delegation was assisted by Prof. Tania GROPPi, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat. The rapporteurs wish to express their thanks to the expert for her assistance in the preparation of this report. This group of persons will be hereinafter referred to as “the delegation”.

5. The monitoring visit took place from 18-20 May 2021 remotely. The Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the remote monitoring is appended to the explanatory memorandum.

6. The delegation would like to thank the Permanent Representation of Spain to the Council of Europe and all those who they had exchanges with during these meetings.

2. INTERNAL AND INTERNATIONAL NORMATIVE FRAMEWORK

2.1 Local government system (constitutional and legislative framework, reforms)

2.1.1 Constitutional and legislative bases of local government in Spain

7. Since the re-establishment of democracy, Spain has undergone a deep process of decentralisation, shifting from a highly centralised system before 1978 to a highly decentralised one. Decentralisation is a cornerstone of the Spanish constitutional democracy, based on 1978 Constitution. It includes both the devolution of important legislative and executive powers to the regions, called “Autonomous Communities” (*Comunidades autónomas*)⁴, and the recognition of local self-government (*autonomía local*) for local authorities.

8. As the Constitutional Court stated in its seminal decision 32/1981, “The Constitution prefigures a vertical distribution of public power among entities of different levels that are fundamentally the State, the holder of sovereignty; the Autonomous Communities, characterized by their political autonomy, and the provinces and municipalities, endowed with administrative autonomy of different scope”.

³ See *Boletín Oficial del Estado* (B.O.E. 24 de febrero 1989, n. 47). Article 140 of the Constitution refers to municipalities; Article 141 refers to provinces and islands.

⁴ In this report we will refer to the *Comunidades autónomas* both as “Autonomous Communities” and “regions”.

9. Article 2 of the Constitution states that “The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards; it recognises and guarantees the right to self-government of the nationalities and regions of which it is composed and the solidarity among them all”.

10. Part VIII of the Constitution is dedicated to the “Territorial Organisation of the State”. According to Article 137, “The State is organised territorially into municipalities, provinces and Autonomous Communities. All these bodies shall enjoy self-government for the management of their respective interests.” Article 140 guarantees autonomy to municipalities, whereas Article 141 provides for the existence of other local entities that are configured as groups of municipalities, which are the Province and the Island, as well as others that may be created. Finally, Article 142 refers to local financial resources.

11. The rest of the provisions of Part VIII are dedicated to the Autonomous Communities, whose powers are also defined by Statutes of Autonomy, according to an asymmetric system of division of competences, implicating that each Autonomous Community can enjoy a different level of competences. Those Statutes (formally organic State laws) complement the Constitution and are part of the “constitutional bloc” (*bloque de constitucionalidad*), acting as standards for the judicial review of national and regional legislation.

12. In Spain there are 17 Autonomous Communities and 2 autonomous municipalities (Ceuta and Melilla) which have more limited competences than Autonomous Communities, but more competences than regular municipalities. These two municipalities each hold a special individual Autonomy Status, approved on 13 March 1995 by Organic Laws n° 1/95 and n° 2/95 respectively, which established a specific institutional system (Assembly, President and Governing Council), their responsibilities and their own economic and financial structure. They are municipalities in the true sense, but their organisation and powers are akin to those of an Autonomous Community.

13. According to Article 149.3 of the Spanish Constitution: “Matters not expressly assigned to the State by this Constitution may fall under the jurisdiction of the Autonomous Communities by virtue of their Statutes of Autonomy. Jurisdiction on matters not claimed by Statutes of autonomy shall fall with the State, whose laws shall prevail, in case of conflict, over those of the Autonomous Communities regarding all matters in which exclusive jurisdiction has not been conferred upon the latter. State law shall in any case be suppletory of that of the Self-governing Communities”.

14. The competence to regulate local government is shared between the State and the Autonomous Communities, according to Article 148.1.2⁵ and Article 149.1.18⁶ of the Constitution. The regulatory powers of the regions are very wide, and the national legislature can only set the basic rules governing local authorities. Regions, thus, enjoy a wide domain of political discretion to regulate local government, but they must respect the principles of the basic legislation of the State. The dividing line for this allocation of regulatory powers between the State and the regions is far to be clear, and has often been the subject of political discussion, as well as of constitutional adjudication.

15. Among national legislation, the main pieces of legislation are Law n° 7/1985, of April 2nd, 1985, on the Basic Provisions on Local Government (Ley Reguladora de las Bases del Régimen Local: LBRL); Organic Law n° 5/1985, of June 19th, concerning the general electoral system, which governs also local elections (Ley Orgánica del Régimen Electoral General: LOREG); Royal Legislative-Decree n° 2/2004, of 5 March 2004, concerning local finances (Real Decreto Legislativo por el que se aprueba el texto refundido de la Ley Reguladora de las Haciendas Locales: TRLHL). The LBRL has been amended several times. Law n° 11/1999, of April 21⁷ and Law n° 57/2003, of December 16th⁸ modified the organisation of local authorities, especially the relationships between the executive and the council.

16. As a consequence of the economic and financial crisis of the Eurozone, which deeply affected Spain, an important reform was passed in 2013: Law n° 27/2013, of December 27th, of rationalisation and sustainability of local government (Ley 27/2013, de 27 de diciembre, de racionalización y sostenibilidad de la

5 Article 148.1: “The Self-governing Communities may assume competences over the following matters: [...]2. Changes in municipal boundaries within their territory and, in general, functions appertaining to the State Administration regarding local Corporations, whose transfer may be authorised by legislation on local government”.

6 Article 149.1. 18: “Basic rules of the legal system of Public Administrations [...]”.

7 Ley n° 11/1999, de 21 de abril, de modificación de la Ley 7/1985, de 2 de abril, Reguladora de las Bases del Régimen Local, y otras medidas para el desarrollo del Gobierno Local, en materia de tráfico, circulación de vehículos a motor y seguridad vial y en materia de aguas.

8 Ley n° 57/2003, de 16 de diciembre, de medidas para la modernización del gobierno local.

Administración Local: LRSAL) establishes precise mechanisms for the exercise of local government powers under the principles of budgetary stability and financial sustainability.

17. The LRSAL pursued four basic objectives, according to its preamble: 1) clarify municipal powers to avoid duplication of other administrations, according to the principle "one Administration, one competence"; 2) rationalise the organisational structure of the local administration; 3) ensure financial control and more rigorous budgeting; and 4) favour private economic initiative avoiding disproportionate administrative interventions. For each of these objectives, the LRSAL established a series of concrete measures⁹.

18. This law can be understood considering the more general context¹⁰, especially the reform of Article 135 of the Constitution passed in September 2011, which enshrined a structural balance fiscal rule for Central State and regional governments and a balanced budget fiscal rule for local entities in the Constitution with a threefold-aim: ensuring the financial sustainability of all of Spain's levels of government; bolstering confidence in the stability of the Spanish economy; and underlining Spain's budgetary stability commitments to the European Union (given that, ultimately, the reform aims to comply with the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union of March 2nd, 2012). Consequently, Organic Law n° 2/2012 of April 27th, 2012, on Budgetary Stability and Financial Sustainability¹¹ was approved.

19. Notwithstanding the actions of unconstitutionality brought by several regional governments on the grounds that the new measures for the rationalisation of the local administration would jeopardise the regional competence and the local conflict promoted by 2.393 municipalities, the Constitutional Court considered most of the LRSAL provisions, including those relating to the reorganisation of local powers, justified in the interests of the principles of effectiveness of administrative action (art. 103.1 CE), efficiency in the use of public resources (art. 31.2 CE) and, above all, budgetary stability (art. 135 CE)¹². In the words of the Court, «Article 149.1.18 CE undoubtedly supports basic standards tending to introduce criteria of economic rationality in the local Spanish model in order to carry out the imperatives of arts. 32.1 and 103 CE and budget stability as a standard of conduct to which local entities are subject (art.135.2 CE) »¹³.

2.1.2. Administrative territorial structure

20. According to Article 3, paragraph 1, of the Law n° 7/1985 (LBRL), the local authorities (*entidades locales*) in Spain are: municipalities (*municipios*), provinces (*provincias*) and islands (*islas*).

21. Apart from municipalities, provinces and islands, there are other local government bodies, which also "enjoy the status of local authorities" according to Article 3, paragraph 2 of the LBRL, namely *mancomunidades* (municipal associations), *comarcas* (counties), metropolitan areas, EATIM - territorial entities smaller than municipalities/intra municipal (*entidades de ambito territorial inferior al municipio*) etc.

22. According to the National Register of Local Government Unit¹⁴, local self-government units currently existing in Spain are as follows:

- 8 131 municipalities
- 50 provinces, although in the 7 single-province Autonomous Communities (Principado de Asturias; Cantabria; La Rioja; Comunidad Foral de Navarra; Comunidad de Madrid; Islas Baleares, Región de Murcia) the attributions of the province as local authority are assumed by the corresponding Autonomous Communities
- 11 islands (4 Balearic Islands and 7 Canary Islands)

9 On this law and the relative case-law, see R. Gracia Retortillo, *La LRSAL ante el Tribunal constitucional: la afectación a la autonomía local*, in *Anuario de Gobierno Local*. 2015-16, p. 225 ff.

10 The Constitutional Court pointed out the criterion of the connection of the new modifications on LBRL with the principle of budgetary stability of Article 135 of the Constitution. See; STC 41/2016, de 3 de marzo, F.J. 2

11 Ley Orgánica 2/2012, de 27 de abril, de Estabilidad Presupuestaria y Sostenibilidad Financiera.

12 Here the list of the judgments on the LRSAL (the appellant is indicated in parentheses) : STC 41/2016, de 3 de marzo (Asamblea de Extremadura), STC 111/2016, de 9 de junio (Gobierno de Andalucía), STC 168/2016, de 6 de octubre (Gobierno del Principado de Asturias), STC 180/2016, de 20 de octubre (Parlamento de Navarra), STC 44/2017, de 17 de abril (Diputados del Congreso), STC 54/2017, de 11 de mayo (Parlamento de Cataluña), STC 93/2017, de 6 de julio (Consejo de Gobierno Cataluña), STC 101/2017, de 20 de julio (Gobierno de Canarias) y STC 107/2017, de 21 de septiembre de 2017 (conflicto en defensa de la autonomía local).

13 STC 41/2016, F.J. 3.

14 https://www.mptfp.gob.es/portal/politica-territorial/local/sistema_de_informacion_local_-SIL-/registro_eell.html

- 1 024 *mancomunidades* (associations of municipalities)
- 83 *comarcas* instituted by some Autonomous Communities (in País Vasco, Aragón, Cataluña and Castilla y León)
- 3 metropolitan areas, located in Catalonia (1) and the Valencian Community (2).
- 3 685 territorial entities smaller than municipalities/EATIM (*entidades de ámbito territorial inferior al municipio*). Most of the EATIM belong to the Autonomous Community of Castile and León.

Municipalities

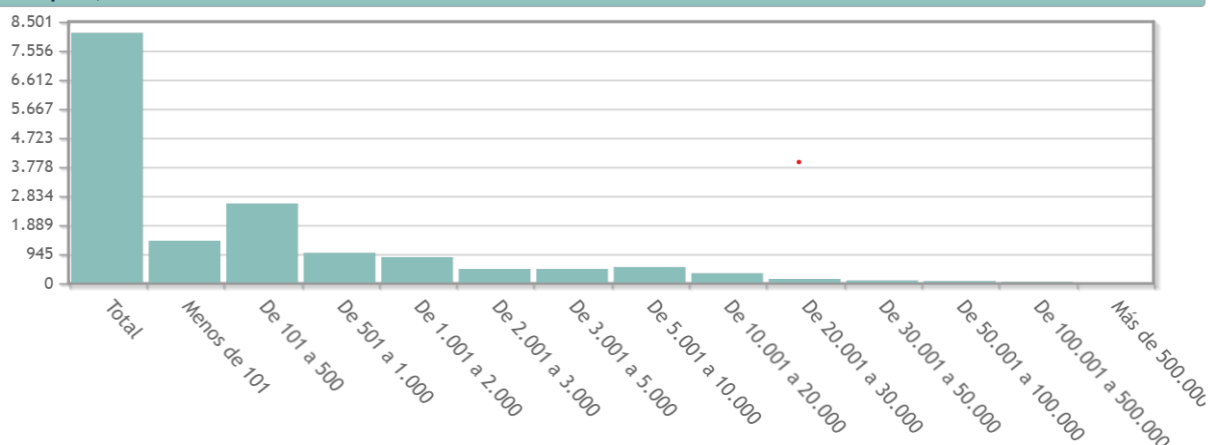
23. Municipalities constitute the “first tier” of local government. The Spanish constitution recognises the municipalities and guarantees their autonomy.

24. In terms of population size¹⁵, the largest municipality is Madrid (3 334 730 inhabitants). 84% of all municipalities have less than 5 000 inhabitants, but only 13% of the population live in them. There are 17 large cities in Spain, inhabited by 250 000 or more citizens.

25. One of the most important problems facing local governments in Spain is the very high number of municipalities. There is a huge proportion of little towns, with a low number of inhabitants. Many municipalities have difficulties in providing the essential public services that are obligatory according to the law since they lack the necessary (economic, technical and human) resources to do so. Furthermore, municipalities are not distributed in a balanced way across the nation. Some regions have a higher number of municipalities than others due to their surface area or to other patterns of human settlement¹⁶. Depopulation of rural area is also a relevant issue, leaving municipalities covering vast areas with a low and scattered population, with important consequences also for the cost of the municipal essential services to be provided.

Inhabitants	Less than 100	101-1 000	1 001-2 000	2 001-5 000	5 001-10 000	10 001-20 000	20 001-50 000	50 001-100 000	More than 100 000
Number of municipalities	1 399	3 606	867	955	545	343	267	86	63

Cifras Oficiales de Población de los Municipios Españoles: Revisión del Padrón Municipal, Total, Tamaño de los municipios, 2020

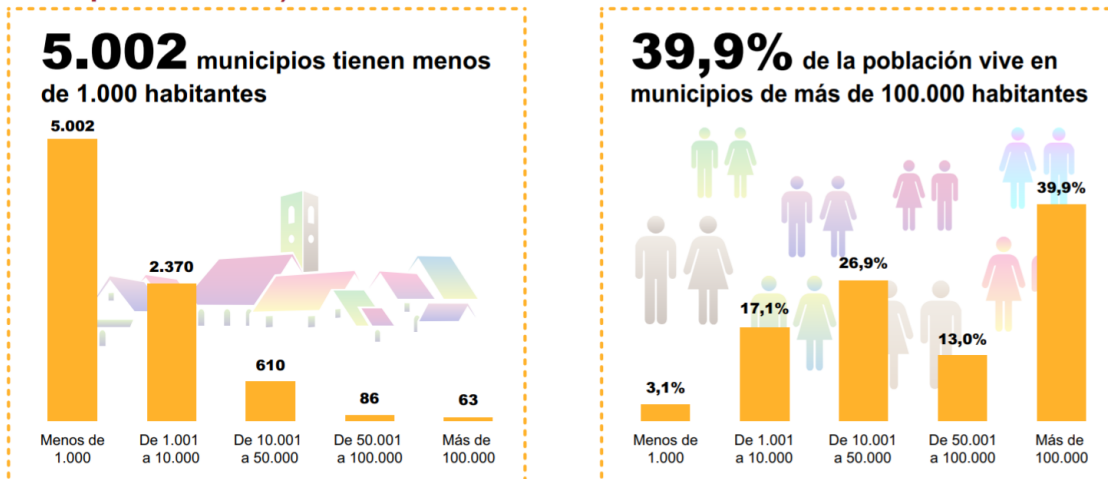


Source: INE 2020 (<https://www.ine.es/jaxiT3/Datos.htm?t=2851#tabs-grafico>)

¹⁵ <https://www.ine.es/dynt3/inebase/es/index.htm?padre=517&capsel=525>

¹⁶ A. M. Moreno, *Local government in Spain*, in A. M. Moreno (ed), *Local Government in the member states of the European Union: a comparative legal perspective*, INAP, Madrid, 2012, p. 604.

Población inscrita en el Padrón a 01/01/2021: 47.344.649
(Datos provisionales)



Source: INE 2021 https://www.ine.es/infografias/infografia_padron.pdf

26. The *ayuntamientos* are in charge of the municipalities' government and administration.

27. The executive organs of municipalities are composed of the mayor (*alcalde*), the executive committee (*junta de gobierno*), and the vice-mayors (*tenientes de alcalde*). The mayor is the political leader of the city. Unlike most European countries, in Spain, the mayor is not directly elected by the citizens. He is appointed by the councillors and may be removed by them, following a no confidence motion (*moción de censura*). However, the mayor is the most important and the key political official of the city. He/she is usually the real political leader in the city or town and the politician who is *de facto* accountable. In localities of less than 100 inhabitants the mayor may be directly elected by the citizens' majority vote; the electoral constituency is co-extensive with the municipality (Article 29 of the LBRL as amended by Organic Law n°2/2011, of January 28th, this special regime is called *Concejo Abierto*, or «open council»).

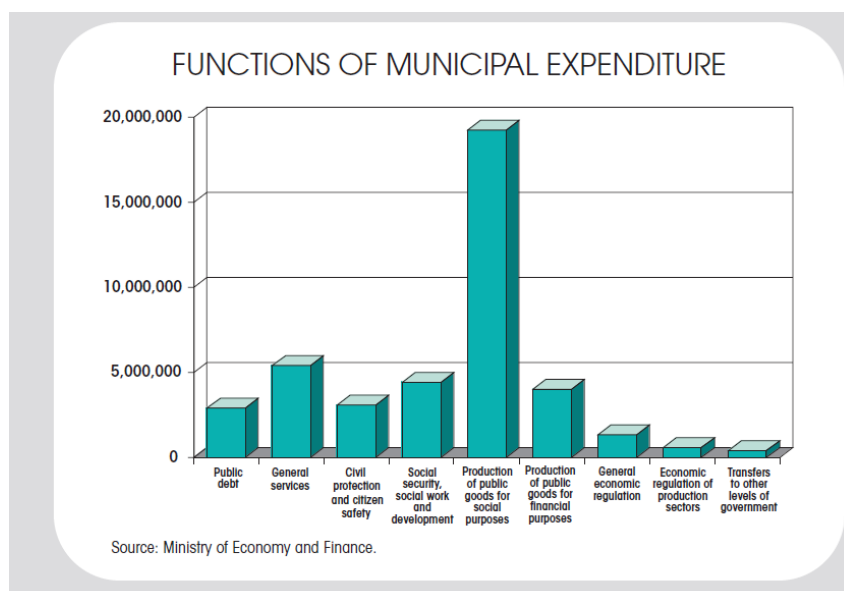
28. The most important deliberative body is the council (*pleno del ayuntamiento*). The members of the council (*concejales*) are directly elected by citizens every four years in the framework of the general local elections (the last local elections in Spain took place in May 2019). The number of councillors and the electoral procedures are regulated by the Electoral General Law (LOREG).

29. The functions of the mayor are set out in Article 21 of the LBRL, whereas the functions of the plenary council are set out in Article 22 and those of the executive committee in Article 23. Special regulation has been introduced for the organisation of bigger municipalities by the Title X of the LBRL, which was added by the Law n° 57/2003¹⁷: municipalities whose population exceeds 250 000 inhabitants and provincial capital municipalities whose population is greater than 175 000 inhabitants. Regional laws could extend the special provisions to the municipalities that are provincial capitals, regional capitals or headquarters of the autonomous institutions, or to municipalities whose population exceeds 75 000 inhabitants, who present special economic, social, historical or cultural circumstances. Special legal rules also apply for the municipalities of Madrid and Barcelona.

Competences of municipalities

30. The current system of municipal competences is based on Law n° 7/1985 (LBRL), as amended by the Law n° 27/2013 (LRSAL). The law distinguishes between competences (*competencias*) (Articles 25-27) and powers (*potestades*) (Article 4), which are the legal instruments that local authorities can use in exercising their functions.

¹⁷ Ley n° 57/2003, de 16 de diciembre, de medidas para la modernización del gobierno local.



31. The LBRL provides for a competency system based on 4 different forms of attribution of competences to the municipalities:

- **Mandatory services.** In the first place, Article 26 of the LBRL establishes some mandatory minimum services that every municipality is obliged to provide based on its population. These are those services or competences that the municipalities must necessarily develop in order to guarantee an adequate urban environment¹⁸. Thus, these services represent a kind of lowest common denominator of competence that must be guaranteed throughout the national territory and that is directly attributed to the municipalities by the LBRL.

- **Own competences (*competencias propias*).** Secondly, Article 25.2 LBRL lists a series of matters in which, when municipal interests are considered affected, the State or regional legislator (depending on who is competent in each specific matter) must attribute powers to the municipalities at the time they proceed to its regulation¹⁹. In these cases, the LBRL does not, in principle, attribute any powers to the municipalities, but rather establishes the obligation that the law that regulates these matters attributes powers to the municipalities, although without specifying what they should be.

Within the competences conferred on the matters of Article 25.2, the way in which the State or regional sectorial legislation specifies municipal competence makes it possible to distinguish, in turn, two different assumptions of own competence. In the first place, those cases in which the sectorial law attributes to the municipality a competency of compulsory exercise (e.g. urban discipline and inspection in its municipal term). Secondly, those cases in which the sectorial legislation attributes optional or discretionary power to the municipality, which it may or may not exercise and, if exercised, decide the scope or intensity of the intervention (for example, jurisdiction over municipal museums, according to the legislation of the Community of Madrid, the municipalities are free to decide their creation, as well as their number).

- **Delegated powers.** Thirdly, Article 27 of the LBRL allowed the State or the Autonomous Communities to delegate the exercise of their own powers to the municipalities, which, in practice, has frequently been done through the signing of collaboration agreements between the different administrations, but without configuring it as a true delegation of powers.

- **General clause of competences.** Finally, Article 25.1 of the LBRL allows municipalities to “promote all kinds of activities and provide all public services that contribute to satisfy the needs and aspirations of the neighborhood community”, although only “within the limits provided by this article” (this part was added by the LRSAL, as we will precise in the following paragraphs). Regional legislation may attribute competences in other domains. As a result, the system of local competences is far to be uniform, as it may be different among the several regions.

¹⁸ For example, waste collection and treatment; home drinking water supply and wastewater evacuation and treatment; street cleaning; access to population centers; paving urban roads or public lighting.

¹⁹ For example, environmental protection, urban planning, traffic, public transport, police, fire prevention and extinction, street commerce, supplies or public health.

32. This scheme of competence distribution has determined that, in practice, some municipalities have ended up supplementing the State and regional competences or providing new services as the local residents demanded them. In some cases, all these competencies have been developed without having specific funding for it or through collaboration agreements with the Autonomous Communities, which fully or partially financed the development of these new services which, in most of the cases were of regional competence. Thus, within this legal scheme, some municipalities have developed both “duplicate” (*competencias duplicadas*) and “improper” competences (*competencias impropias*)²⁰.

33. *Competencias impropias* can be understood as those which have not been expressly and specifically attributed by law to the municipality. For this reason, this concept would include the powers developed by the municipality under the general powers clause of Article 25.1 LBRL.

Competencias duplicadas are those functions which are developed by several administrations simultaneously and with overlapping material and territorial scope. Duplication of competences can occur both in own competences and in improper competences. The most frequent is that duplications originate in improper competences, since these normally refer to material areas in which the distribution of competences is not clear. This development was also possible because the old art. 28 of the Act 7/1985 allowed the municipalities to provide different services in several domain. This general clause was abrogated by the LRSAL (see infra, note 62).

34. The modification operated in the LBRL by the Law n°27/2013 (LRSAL) tried to address this phenomenon of duplicate and improper powers, although it was declared partially unconstitutional by various judgments of the Constitutional Court as a consequence of the invasion of competence produced by the State in the regional competences. Although, as stated above, the majority of its provisions, especially the part related to the distribution of competences, was considered in line with the Constitution.

35. The delegation was informed by the representatives of the municipalities (especially during the meeting with Madrid municipality) that the modification of the LBRL operated by the LRSAL has not affected the duplicate and improper powers that the Madrid municipality had already developed prior to its entry into force, but it has significantly limited the possibility of assuming new competencies, in three ways. In the first place, the LRSAL imposes a series of limitations directed to the State and autonomous legislators, so that when a State or regional law is to attribute competences to the Municipalities, the following requirements must be met (article 25.3, 4 and 5 LBRL):

- That the law be accompanied by an economic report that reflects the financial impact and compliance with the principles of stability, sustainability and efficiency.
- That the law provides for the provision of the necessary resources to guarantee the financial sufficiency of local entities.
- That the municipal competence in question is specified, ensuring that there is no simultaneous attribution of the same competence to another administration.

To sum up, when a law attributes new competences to the municipalities, the financing of the new competences, the financial sustainability of the local entities that are going to develop it, and the non-duplication in the exercise of competences must be guaranteed.

36. Secondly, when the State or the autonomous communities delegate powers to local entities, the delegation must necessarily be accompanied by financing, being null without said endowment.

37. Third, the content of the general clause of powers of article 25.1 LBRL is limited by the LRSAL to the matters of article 25.2 LBRL itself. That is, its content is substantially limited, it no longer serves to satisfy any ancillary need or provide any service that could be demanded by citizens, this will only be possible if it operates within the matters listed in article 25.2 LBRL. In addition, the exercise of improper powers is no longer free, but is subject to the following 2 conditions (article 7.4 LBRL):

38. That the financial sustainability of the municipal treasury is not put at risk, a circumstance that must be confirmed by means of a report from the General State Administration or the Administration that exercises financial protection functions;

20 During the consultation process after the monitoring activity, the FEMP pointed out that they prefer to use the term “gastos de suplencia” (replacement costs) which they consider more appropriate than the term “competencias impropias” (improper competence).

39. That there is no duplication in the exercise of jurisdiction with another Administration, a circumstance that must be proven by means of a report from the competent Administration by reason of the matter.

40. If both favorable reports are not obtained, the municipality will not be able to provide the service and, where appropriate (if it lacks financial sustainability), it must approve an economic-financial plan.

Provinces

41. Provinces and islands form the “second tier” of local government. The province has a deep tradition in Spanish constitutionalism since 1812, which has been reproduced (with slight variations) in the Constitution of 1978. As established in Article 141(1) of the Constitution, “The province is a local entity, with its own legal personality, determined by the grouping of municipalities and by territorial division, in order to carry out the activities of the State. Any alteration of the provincial boundaries must be approved by the *Cortes generales* by means of an organic law”.

42. According to Article 31 of the LBRL, “The Province is a local entity determined by the grouping of Municipalities, with its own legal personality and full capacity to fulfill its purposes.

43. The Province's own and specific purposes are to guarantee the principles of inter-municipal solidarity and balance, within the framework of economic and social policy, and, in particular:

- a) To ensure the comprehensive and adequate provision in the entire provincial territory of municipal services.
- b) Participate in the coordination of the local Administration with that of the Autonomous Community and the State.

44. The government and autonomous administration of the Province correspond to the Provincial Council or other representative corporations”.

45. In terms of competences and institutions of government, these vary greatly among regions. In the uniprovincial Autonomous Communities, the provincial institutions and competences are absorbed by the region. In all regions composed of more than one province, the latter are governed by “provincial deputations” (*diputaciones provinciales*), with a limited scope of administrative competences²¹.



Source: IGN https://www.ign.es/espmmap/spain_bach.htm

- Andalucía : Almería, Cádiz, Córdoba, Granada, Huelva, Jaén, Málaga, Sevilla
- Aragón : Huesca, Teruel, Zaragoza

21 However, it should be pointed out that in the Canary Islands, the two «Provinces» do not have a truly «provincial organisation» as such, since there the second tiers type of local government is the Island, with the governing body called «*cabildos*» (council of the island). These bodies are also regulated by regional laws and regulations: see A. M. Moreno, *Local government in Spain*, p. 617.

- Asturias, Principado de: Asturias
- Baleares, Illes: Baleares, Illes
- Canarias : Santa Cruz de Tenerife, Las Palmas de Gran Canaria
- Cantabria : Cantabria
- Castilla y León : Ávila, Burgos, León, Palencia, Salamanca, Segovia, Soria, Valladolid, Zamora
- Castilla-La Mancha : Albacete, Ciudad Real, Cuenca, Guadalajara, Toledo
- Cataluña : Barcelona, Girona, Lleida, Tarragona
- Comunitat Valenciana : Alicante, Castellón, Valencia
- Extremadura : Badajoz, Cáceres
- Galicia : A Coruña, Lugo, Ourense, Pontevedra
- Madrid, Comunidad de: Madrid
- Murcia, Region de: Murcia
- Navarra, Comunidad foral de: Navarra
- País Vasco : Alava, Bizkaia, Gipuzkoa
- Rioja, La: Rioja

46. The provincial council (*Diputación Provincial*) is the representative body of the province. It is composed of a chairman (*presidente de la diputación*) and of members of the said provincial council (*diputados provinciales*, provincial deputies), in a number which is proportional to the province's population. Those deputies are not directly elected by voters, but designated by the political parties, among those persons who have been elected as city council members (*concejales*) in the local elections, in any of the municipalities of the province. Thus, the same person may discharge at the same time two positions: the position of mayor or member of the municipal council, and the position of deputy or President of the provincial council. Proportional rules here apply, and usually the political party who has managed to obtain the highest number of city council members (*concejales*) among the different municipalities of the province, also get the Chairmanship of the Provincial Council.

47. The declaration made at the moment of the ratification of the Charter, according to which Spain “does not consider itself bound by paragraph 2 of Article 3 of the Charter to the extent that the system of direct suffrage foreseen therein should be implemented in all local authorities falling within the scope of the Charter” may be explained by the fact that the members of the provincial councils are not elected directly.

48. A special provincial regime does exist in the Autonomous Community of the Basque Country, where the provincial councils are elected by a direct universal suffrage system. These councils, called *juntas generales*, correspond to the three provinces of the Basque Country, namely: Álava, Vizcaya and Guipúzcoa²².

49. The attributions of the plenary provincial council are mentioned in Article 33(2) of Law n° 7/1985 and in Article 35(2) for the executive committee. The attributions of the President of the provincial council are listed in Article 34(1) of the law. As for the provincial competences, the national legislation is not as detailed and exhaustive as it is when it deals with municipalities. Therefore, the role, services and responsibilities of the provinces are mainly regulated by regional legislation. However, national legislation establishes a set of minimum competences to be discharged by the provinces, in Article 36(1) of Law n°7/1985:

- the co-ordination of the various municipal services in order to ensure the comprehensive, appropriate provision of compulsory minimum services;
- the provision of legal, economic and technical assistance and co-operation for all municipalities, particularly those with more limited economic and managerial resources;
- provision of public services extending to several municipalities and, where appropriate, to several associations of municipalities (*comarcas*);
- promotion and administration of provincial interests.

50. The LRSAL amended Articles 26.2 and 36.1, with the aim to reinforce the role of the Provinces. New provincial competences have been introduced, as the coordination of certain minimum services in municipalities with a population of less than 20,000 inhabitants or the attribution to them of new functions such as the provision of tax collection services, electronic administration or centralized contracting in

22 STC 118/2016 affirms – based on first additional provision of the Spanish Constitution – that the Historical Territories are provinces but also “*foral*” territories, which grants a uniqueness that exceeds the provincial level. The Basque Provinces have larger and more important competences and powers than regular provinces. For instance, they have their own and separate tax systems.

municipalities with population of less than 20,000 inhabitants, their active participation in the preparation and monitoring of the economic-financial plans or the coordination and supervision tasks, in collaboration with the Autonomous Communities, of the merger processes of municipalities.

Islands

51. The country has two archipelagos, the Canary Islands and the Balearic Islands. Although islands are not mentioned by Article 137 of the Constitutions, according to Article 141, paragraph 4, “In the archipelagos, each island shall also have its own administration in the form of Cabildo or Insular Council”. Consequently, the constitutional guarantee of local autonomy reaches the Islands, in the Balearic and Canary archipelagos, which corresponds to the characterization of them as local territorial entities that appears in article 3.1.c) of the LBRL.²³

52. Article 1 of the LBRL equates the Island with the municipality and the province in terms of their “identical” autonomy for the management of their interests. The island is a basic entity of the territorial organization of the State, and it enjoys autonomy to manage its interests. The terms used by the article of the LBRL when providing that the province and, where appropriate, the island also enjoy the same autonomy for the management of the respective interests, allow establishing that the island is located in the same plane and position. that is granted to the province.

53. The governing bodies of the islands are mainly regulated by regional laws. In fact, the Law n° 7/1985 only contains a couple of substantive provisions on these local authorities. Their councils are directly elected by the people. In the Balearic Islands, the new regional Statute introduced in 2007 the direct election of the “Consejos insulares”, which were previously integrated by the deputies elected in each insular circumscription. This provision was implemented by regional legislation²⁴. In the Canary Islands, the insular councils (Cabildos insulares) are directly elected based on the State legislation (LOREG, article 201). The Cabildos autonomy is regulated by the regional Statute and by regional legislation²⁵.

Organisational models of other local government bodies

54. Apart from municipalities, provinces and islands, there are other kinds of local government bodies, namely *mancomunidades* (municipal associations), *comarcas* (counties), metropolitan areas, EATIM - territorial entities smaller than municipalities/intra municipal (*entidades de ámbito territorial inferior al municipio*) etc.

55. While the legal regime which applies to these types of local government units is highly heterogeneous, these units share some features:

- They are not explicitly mentioned by the Constitution;
- They do not enjoy the constitutional protection provided to municipalities, provinces and islands, namely their name and legal status may be entirely regulated by the regions. State legislation and the regional legislature may decide at any moment to create or to terminate those types of bodies.

56. *Mancomunidades* are voluntarily established entities created by the municipalities aimed at carrying out joint projects or providing common services.

57. As for *Comarcas*, the statutes of the Autonomous Communities establish that they can create “*comarcas*” (supra-municipal or district authorities) or other entities grouping several municipalities having common interests requiring separate management or calling for the provision of services covering the area in question. *Comarcas* can be established to fulfil a variety of goals at the local level or provide a variety of local services common to the municipalities involved. *Comarcas* as local authorities only exist in Catalonia, Aragón, Castile and León and in Álava, one of the three Basque provinces (in this province under the name of “*cuadrillas*”). These *comarcas* have a clearly defined status, are regulated by law and even their comarcal councils have some powers. In some other cases their legal status is not formal. They correspond to natural areas, like valleys, river basins and mountainous areas, or even to historical regions overlapping different provinces and ancient kingdoms. In other places, such as Extremadura, the *comarca* may be simply a loosely-defined region.

²³ Judgment of the Constitutional Court, STC 132/2012, of June 19.

²⁴ Ley de la Comunidad autónoma de las Illes Balears n° 7/2009, de 11 de diciembre, electoral de los Consejos Insulares.

²⁵ Ley de la Comunidad Autónoma de Canarias n° 8/2015, de 1 de abril, de Cabildos Insulares.

58. According to Article 42(4) of the Law n° 7/1985 (LBRL), the creation of the *comarcas* should not entail, for the municipalities, any curtailment of their powers to supply the compulsory minimum services mentioned in Article 25(2) or 26 of LBRL.

59. *Metropolitan areas* are local entities gathering together municipalities with large built-up urban areas whose inhabitants have economic or social bonds that make joint planning or work/service co-ordination necessary. According to Article 43 of Law n° 7/1985, the Autonomous Communities, after consulting the State administration and the municipalities and provinces concerned, may, by means of a law, create, modify or do away with metropolitan areas in accordance with the provisions of their respective statutes. Autonomous Community legislation lays down the organs of government and administration in which all the municipalities in the area must be represented, the economic and functional system which ensures participation in decision-making by all the municipalities as well as an equitable distribution between those municipalities of financial commitments, the services provided and works conducted at the metropolitan area level and the relevant implementation procedure.

60. EATIM (*entidades de ámbito territorial inferior al municipio*): territorial entities smaller than municipalities constitute a further administrative unit below that of a municipality, namely the local territorial entity smaller than a municipality (smaller local entities), defined as a unit for the management, decentralised administration and political representation within a municipality (Law n° 7/1985).

2.4 Supervision on local authorities

61. Under the Spanish constitutional system, local autonomy means, above all, the possibility for local authorities to adopt political and administrative decisions free from intervention, authorisation, or approval by the upper (regional and national) levels of government ²⁶.

62. However, local autonomy does not mean absence of external control. In fact, *lato sensu*, the activity of local authorities may be «checked», controlled or supervised by different types of bodies, with a different degree of scrutiny.

63. First of all, there is a complex and delicate set of inter-administrative controls of *legality*, mainly regulated by Articles 65-68 of the LBRL. Different possibilities must be considered:

(1) If the Autonomous Community or the State believes that a local authority has taken a measure (either an individual decision, a rule or a plan) that is illegal, they can issue a warning to the local body, asking for the annulment of the contested measure. The local authority has a one-month period for either rectifying the measure or sustaining it. In the latter case, the Autonomous Community or the State may sue the local body in the administrative courts. A direct judicial claim (without the need to issuing a warning) is also possible. Although this is not explicitly regulated by the legal scheme on local government, the general law on judicial control of administrative action allows the State/Region attorney to ask the court to issue an injunction (suspension of the execution of the contested measure).

(2) If the Autonomous Community or the State believes that a local authority has taken a measure (either an individual decision, a rule or a plan) for which the local body does not have competence, or which encroaches with competences of the «higher» administrations, they, without the need of issuing a warning, may sue the local body in the administrative courts. In the complaint, the Region/State may ask the court to suspend the execution and enforcement of such a measure. However, that suspension is not automatically granted by the court. The administrative judge is free to decide whether the suspension is justified or not. If granted, the suspension lasts until the case is adjudicated on the merits.

(3) If the State (through its territorial delegates) understands that a local authority has taken a measure (either an individual decision, a rule or a plan) that endangers seriously the general interest of Spain, the delegate of the national government must address a warning to the local body, which has a ten-day period to either rectify or to sustain the contested measure. In the latter case, the national government's delegate has the power to suspend the contested decision by its own power, but he must immediately sue (within a ten-day period) the local authority in the administrative court. In this litigation, thus, the State delegate will ask the court to affirm the suspension that s/he has already declared. However, the central government holds the burden of persuading the court that the suspension already declared must be sustained. In addition, in

26 A. M. Moreno, *Local government in Spain*, p. 625 ss.

exceptional cases, the Autonomous Community or the State may take action or adopt measures in place of the local authority, if the local body consistently and unlawfully refused to adopt a measure which is obligatory under the law. Substitution is an extraordinary mechanism. Therefore, it has to be time-limited, and restrained to a given file or a concrete decision. In very extreme cases, the Council of Ministers, which is the top central government agency, may decide to dissolve the governing body of a local authority, when the local body runs the local affairs in a way which seriously damages the general interest and which constitute a violation of a constitutional duty.

64. Secondly, any affected person, company or organisation may file a lawsuit challenging in courts a local authority's decision, a regulation or a plan, if they comply with the general standing requirements established in the applicable procedural law.

65. Finally, the Supreme Audit Institution (*Tribunal de Cuentas* or Spanish Court of Audit) also performs an *ex post* control on the lawfulness and regularity of the expenses made by local authorities, on the basis of the applicable law on budgeting and accountancy. If the municipality or the province is located in an Autonomous Community which has its own external control body, then they are also controlled by that body. When illegalities or irregularities are found, responsibilities may follow on the part of the mayor, the deputy-mayors, etc.

66. Only in some sectors of governmental action, sectoral legislation establishes the need for the municipality to get the approval from either the regional or State agencies and departments. The cases are few, but important. Thus, for example, in the domain of land use and planning policy, the approval procedure for municipal land use plans is two-fold: municipalities are free to decide and to approve their own plans, but their approval is just a sort of «preliminary» or «initial» one. To be fully binding and executive, the plan needs the «definitive» approval of the regional agency on land use and territorial policy. Also that regional control over municipalities is restricted to legality issues.

67. The financial supervision on local authorities is exercised by the State or by the Autonomous Communities (which assumed this competence).

68. There are a series of information obligations derived from the application of the budgetary stability and financial sustainability regulations, which are established in Order HAP / 2105/2012, of October 1, which develops the provisions of the Organic Law 2/2012, of April 27, on Budgetary Stability and Financial Sustainability, and are aimed at the supervision and control of the four basic pillars of financial sustainability:

- Control of the public deficit
- Compliance with the spending rule
- Imposition of public debt limits
- Obligations related to the average period of payment to suppliers

69. The Order regulates, in general, a series of periodic and non-periodic obligations for the provision of information that territorial Administrations have with the General State Administration, but also includes another group of periodic and non-periodic obligations that affect specifically local authorities.

70. The LRSAL transfers and applies some control mechanisms expressly provided for in the Organic Law n° 2/2012, such as the economic-financial plan that must be drawn up by local entities that have failed to comply with the budgetary stability regulations and to which the LRSAL adds new mandatory content in relation to their competences, the forms of management of mandatory services, financing or organisation (art. 116bis LBRL). Additionally, it is necessary to refer to the obligation to communicate annually to the State the «effective cost» of municipal services (art. 116 ter LBRL), which serves as a parameter of a certain efficiency control over municipal services and activities that, where appropriate, must be subject to provincial coordination (26.2 LBRL). Finally, the LRSAL recentralises the internal economic-financial control regime, on the one hand, attributing to the State the regulation of the statute of local auditors (art. 213 Law on Local finances: TRLHL) and, on the other, imposing on these information obligations with the General Intervention of the State and with the Spanish Court of Audit (art. 218 Law on local finances).

2.5 Financial resources of local authorities

71. The Spanish Constitution contains specific provisions stressing the principle of financial sufficiency, by establishing that: «Local treasuries must have sufficient funds available in order to perform the tasks assigned by law to the respective corporations and shall mainly be financed by their own taxation as well as by their

share of State taxes and those of Autonomous Communities» (Article 142). Besides these specific constitutional provisions, Law n° 2/2004, of 5 March, on local finances (now part of the TRLHL) provides a comprehensive regulation of this matter²⁷.

72. As a rule, all decisions concerning the revenues and the distribution of resources are taken in an autonomous way by the local authority and must be decided in the municipal budget, which must be approved by the plenary session of the Council. Local authorities do approve their own budgets, without the need of a prior approval by the regional or State agencies. However, for some financial operations local authorities with a high level of debt require such approvals, for instance when the local entity envisages having recourse to borrowing, above a given ceiling. As for expenditure, it is also decided in an autonomous way. The local audit body takes care that the expenses comply with procedural and substantive legal requirements.

73. The revenues of local authorities may come from different sources (own taxes and fees, transfers, other sources).

74. «Own revenue» (*recursos propios*) includes all the different types of income generated by the activity of local authorities either of a fiscal or non-fiscal nature. Within this group we may distinguish between fiscal income (taxes, charges and fees) and non-fiscal income. As a measure of financial autonomy, it should be stated that, according to information released by the national tax administration, and corresponding to 2018 figures, own resources amount to 61,1% of the total income of municipalities and 22,4 in the case of provinces²⁸.

(1) *Taxes, charges and fees*: Municipalities enjoy taxing powers. In reality, municipalities cannot «create» or establish freely those taxes (*impuestos*), but it is necessary a piece of legislation from the State or the Autonomous Community to establish such tax. Municipalities may decide to «set» or to «impose» the taxes created in the Law (namely, Law n° 2/2004) and, in addition, may regulate key aspects of such taxes. Municipalities enjoy a large domain of regulatory discretion in the concretisation of those taxes, since they (usually medium and large cities) approve specific regulations for each type of local taxes, called «*ordenanzas fiscales*». These rules contain all the necessary legal and operational information for the organisation and the collection of the tax. For instance, each municipal council determines the rate of the local tax in its municipality, within a legal limit.

75. Municipal taxes are divided into «mandatory» and «optional» ones. Mandatory taxes are: (a) the tax on real estate (IBI), which is the most important local tax; (b) the tax on motor vehicles; (c) the tax on economic activities. Optional local taxes include the tax on constructions and installations and the tax on capital gains in urban areas. Small towns lack the organisation and resources to collect their own taxes, so these activities are performed by the tax collection service of the province.

76. According to information released by the national tax administration, and corresponding to 2018 figures, local taxes amount to roughly 56% of the total income of municipalities. The tax on local estate represents the 26,17% of the total income of the municipalities²⁹.

77. On the other hand, local authorities may establish a number of charges and fees (*tasas, precios públicos*) for the use of municipal or provincial properties (sidewalks, squares, facilities and infrastructures), or for the provision of certain services (for instance, depuration of residual waters, collection of waste, planning application fees, use of local sport facilities, etc.). Finally, they can impose special contributions (*contribuciones especiales*) for the financing of public works (improvement of sidewalks and streets, etc.) payable by the beneficiary citizens.

(2) Other sources of own revenues. Municipalities get income from sanctions and fines (for instance, traffic violations, an increasing source of municipal income, especially in large cities). They may (within certain limits) sell the goods and assets that do not belong to the public domain, such as old and abandoned facilities, shares of private companies, etc. Municipalities and provinces may carry out economic activities, usually by means of public, local companies.

27 A. M. Moreno, *Local government in Spain*, p. 620 ss.

28 Ministerio de Economía y Hacienda: *Haciendas locales en cifras. 2018*. Madrid, december 2020, available at https://www.hacienda.gob.es/CDI/SGFAL/HHLL%20en%20cifras/HHLL_en_cifras_2018.pdf, p. 43.

29 Ministerio de Hacienda: *Haciendas locales en cifras. 2018*, p. 42.

78. A portion of local revenues, 20,25%³⁰ comes from transfers awarded by the State (which grants 61,5% of all transfers), and, to an even minor extent, 6,98%, by the regions (23,7 of all transfers %)³¹. The main amount comes from a specific transfer awarded by the national government, by which municipalities participate in the tax revenues of the State («*participación en los tributos del Estado*»). This grant, which is not earmarked, is calculated according to a complex statutory formula, which is reformulated over the years.

79. In addition, municipalities over a certain population, or meeting certain requirements, receive a portion of the collection of some State taxes (*cesión de recaudación de impuestos del Estado*).

80. Apart from that, there are different State and regional funds which are partially or totally aimed at financing or co-financing local works and services (earmarked grants). Here, again, the most important funds are run by the national government (for instance, the Financing Fund of Local Entities (*Fondo de Financiación a Entidades Locales*)). There are also a number of «ad hoc» cooperative or multilateral arrangements for financing local authorities' plans and projects, either at the regional or state level, usually co-financed by the EU structural funds. In this domain, it should be stressed that some EU funding schemes are implemented by means of «Community initiatives» and specific programs that are addressed directly to local authorities (like the «Urban» program). Spanish local authorities have received substantial amounts of these programs over the last three decades.

2.2 Status of the capital city

81. The Spanish Constitution of 1978 states in Article 5: "The capital of the State is the city of Madrid". Madrid has been the capital of Spain since May 1561. The municipality of Madrid, with 3,334,730 inhabitants, is the most populous of Spain. Madrid is also the Capital of Autonomous Community of Madrid, a mono-provincial region which comprises 179 municipalities, for a total of 6,779,888 inhabitants³².

82. The Statute of the Autonomous Community of Madrid, in its Article 6, provides that the city of Madrid shall have a special regime, regulated by an Act of Parliament, which shall determine relations between the State and regional and municipal institutions in exercise of their respective powers and functions. Only in 2006, after several political attempts, a specific regime was eventually approved by the national Parliament: Law n° 22/2006, of 4 July 2006 on the Capital City and Special Regime of Madrid (LCREM)³³.

83. This Law lays down specific provisions for Madrid and specifies the administrative structure, powers and competences of the mayor and other municipal institutions³⁴. The Law also develops the provisions laid down in this respect by both the Constitution and the Statute of the Autonomous Community.

84. In organisational matters, the LCREM is based on three principles:

a) Reinforcement of the parliamentary model: the executive functions of the Mayor and the Governing Board are increased, leaving to the Council the regulations and control on the executive.

b) Expansion of the scope of matters that may be subject to regulatory and self-organisation powers. The LCREM deliberately avoids the regulation of the secondary aspects of the administrative organisation, since it is a matter that must be reserved to City Council.

c) Differentiation between Government and Administration: the political direction is reserved to the municipal government, while the municipal administration is responsible for objectively serving the general interest under the direction of the political bodies.

85. However, other issues remain outside the Law: basically, the development of a special financial regime and the attribution of specific powers to the municipality of Madrid, although this last issue should be addressed mainly through a regional law, and not a state one. According to Article 2 of the LCREM, the City of Madrid should have autonomy to manage its interests, with sufficient economic-financial resources, in accordance with the Constitution, the Statute of Autonomy of the Madrid Autonomous Community, and other

³⁰ Ministerio de Hacienda: *Haciendas locales en cifras. 2018*, p. 42.

³¹ Ministerio de Hacienda: *Haciendas locales en cifras. 2018*, p. 63.

³² <https://www.ine.es/dynt3/inebase/index.htm?padre=517&capsel=517>

³³ Ley n° 22/2006, de 4 de julio, de Capitalidad y de Régimen Especial de Madrid.

³⁴ Also the City of Barcelona has a special status: Ley 1/2006, de 13 de marzo, por la que se regula el Régimen Especial del municipio de Barcelona.

legislation. Independent municipal management shall be carried out with institutional loyalty and in collaboration, co-operation and co-ordination with the General State Administration and the Administration of the Madrid Region.

86. Madrid has not only the same competences as all the other Spanish municipalities, but also specific competences as set out in Section III of the LCREM, which namely assigns the municipality of Madrid, in addition to the competences exercised by all municipalities and the largest municipalities, a special mission regarding public and road safety, as well as infrastructure management.

87. The City of Madrid is split up into 21 administrative districts (*distritos*), governed by “Juntas Municipales de Distrito” (local district boards). The districts are sub-divided into 128 neighbourhoods (*barrios*). The districts exercise competences delegated to them by the municipality, particularly in the following fields: security, transport, road infrastructures, social, cultural and sports services, and building permits. The districts lack legal personality. According to Article 22 of LCREM, they must guarantee the participation of the population in managing the municipality. To that end they are administered by district boards (*Juntas municipales*), composed of members of the Municipal Governing Council and non-elected citizens, and are presided over by a Municipal Councillor appointed by the Mayor. These assemblies must reflect the composition of the Municipal Council.

88. Madrid, like all municipalities with a population of over 250 000, has institutions which are described as “quasi-parliamentary”, given the clear separation of the respective functions of the municipal council (*Pleno*), the mayor, the executive board (*Junta de gobierno*), the deputy mayors, town councillors, unelected members of the executive board and those determined in the organic statute. The members of the *Pleno* are elected by universal suffrage for four years. They elect the mayor, who freely appoints the members of the executive³⁵.

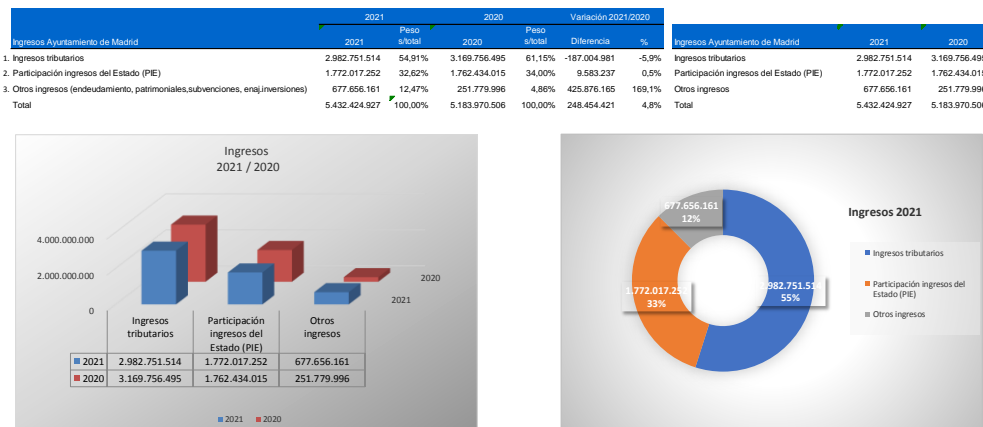
89. The *Pleno* approves municipal regulations and organisational by-laws (*reglamento orgánico*), adopts the budget and supervises the work of the Executive. It can also debate strategic issues. The executive of the municipality of Madrid exercises all the competences devolved to the municipality which are not specifically assigned to any of its other bodies. The mayor leads the executive and the administration. He/she represents the municipality and is accountable to the municipal council for its management.

90. Although the municipal authorities would like to obtain specific resources to offset the costs arising from Madrid’s status as national capital, the 2006 Law does not lay down any specific system of financing for Madrid. The delegation was informed that Madrid municipality has been demanding for a long time to complete the special regime of the city through a regional law, clarifying the competences and completing the transfer of functions.

91. In addition, the municipality pointed out that Madrid, as all the biggest municipalities with greater activity and resources/incomes, is experiencing financial difficulties, because of the rigidity of the local taxes, which do not have any direct relationship with the economic activity generated in the locality or with the users of the services municipal. It was also pointed out the absence of an automatic financial adjustment mechanism in case of the development of new competencies and the extreme severity of the balanced budget rules. Those difficulties, although affecting many Spanish municipalities, are more evident for Madrid, which is the center of a big metropolitan area of more than 5 million inhabitants, a good part of which go to Madrid daily in demand of essential services while they pay their taxes in their cities of origin. On the other hand, the City is the capital of the State and of the Autonomous Community, a fact that represents a loss of income for Madrid derived from the tax exemptions established in favor of said levels of government.

35 The Constitutional Court declared that the possibility to have non-elected members in the local executive boards went against the Constitution and the democratic principle, which is the basis of local autonomy (STC 103/2013).

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ESTADO DE INGRESOS**



Source: Municipality of Madrid (2021)

92. The relationship between the municipality of Madrid and the Autonomous community of Madrid is characterised by the particular nature of the two entities, being the latter a mono-provincial Autonomous Community with a distribution of population that sees more than half of the region's inhabitants living in the City of Madrid itself.

93. Although regional Law nº 2/2003, of March 11, on Local Administration of the Community of Madrid (LALCM), establishes in its Article 76 the possibility that by regional law metropolitan areas or entities are created for the management of specific works and services that require joint planning, coordination or management in municipalities with urban concentrations, the region of Madrid has not created any metropolitan area that includes the City of Madrid.

94. However, some experience of cooperation between the municipality of Madrid and its neighbouring municipalities do exist. The most relevant is the participation of the Madrid municipality in the Madrid Regional Transport Consortium (CRTM), a public body created by Law nº 5/1985, of May 16, of the region of Madrid.

95. As for the intergovernmental relations, the LCREM contemplates in its Article 5, in addition to the ordinary collaboration structures provided by the LBRL, the creation of the Inter-Administrative Capital Commission, as a body of cooperation between the State, the Madrid Autonomous Community and the City of Madrid in matters directly related to the fact of the capital, such as citizen security or the celebration of official acts. However, despite being foreseen in the LCREM, this Commission has not been constituted at present, after fifteen years of validity of the Law. The condition of capital of the State of the City of Madrid determines the need for a closer dialogue with the higher territorial levels, which allows coordinating the public policies of the three administrations for their adaptation to the reality of this great city. For this reason, it is common for the mayor to carry out informal consultations with members of the State and regional governments.

2.3 Legal status of the European Charter of Local Self-Government

96. Spain signed the European Charter of Local Self-Government on 15 October 1985 and ratified it, according to the procedure established by Article 94.1 of the Spanish Constitution, on the 20th of January 1988, with entry into force on 1 of March 1989. Between the signing of the Charter and its subsequent ratification, the authorisation was granted by the Cortes Generales by virtue of the provisions of Article 94.1 of the Constitution. Specifically, the Charter is one of the treaties referred to in letter e) of that Article 94.1: "Treaties or agreements that involve modification or repeal of any law or require legislative measures for its execution." As an international treaty, the Charter, once officially published in Spain, became part of the Spanish internal legal system, as established in article 96.1 of the Constitution.

97. Article 31 of Law nº 25/2014, of November 27, on treaties and other international agreements, entitled "Prevalence of treaties", declares that "the legal norms contained in validly concluded and officially published international treaties will prevail over any other norm of the internal order in case of conflict with them, except the norms of constitutional rank". This provision is based on a unitary consideration of the category "international treaties" that does not depend on the way in which the Kingdom of Spain gives its consent and ensures its applicable prevalence in any case, with the sole exception of the rules "of constitutional rank".

98. As a consequence, the Charter prevail over any other norm of the internal order in case of conflict with them, except the norms of constitutional rank. Since its ratification and entry into force, the Charter has served as an instrument of interpretation, as well as a source of inspiration of Law n° 7/1985 (LBRL).

99. The Constitutional Court often refers to the Charter in its case-law related to local autonomy³⁶, considering it as an interpretative tool and the Charter is also applied by ordinary courts³⁷. The STC 159/2001 is capital because from that moment on, the Charter plays an essential role in determining the concept of “local autonomy”, as highlighted also by STC 240/2006, of July 20, which adjudicated the first conflict in defense of local autonomy.

100. As for the legislation, the Charter was quoted in the preamble of several national and regional laws. Among national legislation, Law n° 11/1999³⁸ whose preamble refers to the definition of local autonomy as “the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population” (article 3.1 of the Charter) and considers that “Public responsibilities shall generally be exercised, in preference, by those authorities who are closest to the citizen” (Article 4.3 of the Charter). More references to the Charter are included in some regional Statutes and in recent regional laws on local government.³⁹

2.4 Previous Congress reports and recommendations

101. The previous monitoring visit in Spain was carried out in 2012 and in January 2013 and the Recommendation 336 was approved on 20 March 2013⁴⁰ (before the entry into force of the Law n° 27/2013, of December 27, on the rationalisation and sustainability of the local administration).

102. Congress Recommendation 336 (2013) asked the Spanish authorities to revise the system of division of competences according to the principle of subsidiarity, with the aim to avoid duplications; to continue the dialogue with the local authorities and their association (FEMP) and to define in law the relationship between the State, the Conference of Presidents of Autonomous Communities and the FEMP; to revise legislation in order to fix a minimum and maximum threshold for remunerating local elected representatives; to ensure that, in accordance with the legislation, each transfer of powers to local authorities is guaranteed by adequate financial resources; to boost the fiscal autonomy of municipalities; to assure smaller municipalities greater management support from the provincial administration and ensure a system of equalisation between municipalities, in order to transfer resources from richer to poorer; to continue to support local and regional administrations during the governmental reform programme in order to strengthen the capacity of public administration to control their own expenses; to ensure that an adequate consultation process is duly organized if the national authorities implement measures to merge municipalities; to sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

36 According to the information provided by the Constitutional Court to the delegation, a simple query to the jurisprudence database that the Constitutional Court maintains on its internet portal (Sistema HJ - Search for constitutional jurisprudence: www.tribunalconstitucional.es) yields the result of 18 citations of the European Charter of Local Autonomy in the reasoning of the Court.

37 The Constitution does not recognise to the Constitutional Court the power to set aside legislation as inconsistent with international treaties. The Constitutional Court can only set aside legislation on the ground of unconstitutionality (Article 161 of the Constitution). It is up to ordinary courts to solve the conflicts between international treaties and domestic legislation by giving preference to the treaties: L. Medina Alcoz, *El valor de la Carta Europea de la Autonomía Local en los procesos constitucionales*, in T. Font i Llovet, M. Vilalta i Reixach (eds.), *La Carta Europea de la Autonomía Local a los treinta años de su aplicación: balance y perspectivas*, Fundación Democracia y Gobierno Local, Barcelona, 2019, Llovet p. 113 ff.

38 Ley n° 11/1999, de 21 de abril, de modificación de la Ley 7/1985, de 2 de abril, Reguladora de las Bases del Régimen Local, y otras medidas para el desarrollo del Gobierno Local, en materia de tráfico, circulación de vehículos a motor y seguridad vial y en materia de aguas.

39 See A. Galán Galán, R. Gracia Retortillo, *La incorporación de la Carta Europea de la Autonomía Local en el ordenamiento local español*, in T. Font i Llovet, M. Vilalta i Reixach (eds.), *La Carta Europea de la Autonomía Local a los treinta años de su aplicación: balance y perspectivas*, p. 43 ff. The first regional law incorporating the principles of the Charter was the Ley n° 5/2010, de 11 de junio, de Autonomía Local de Andalucía. More references are in the Ley n° 2/2016 de 7 de abril de Instituciones Locales de Euskadi and in the Ley n° 3/2019, de 22 de enero, de Garantía de la Autonomía Municipal de Extremadura.

40 CG(24)6FINAL 20 March 2013.

3. HONOURING OF OBLIGATIONS AND COMMITMENTS: ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY ON THE BASIS OF THE CHARTER (ARTICLE BY ARTICLE)

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

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

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

103. Article 2 requires the principle of local self-government to be recognized at domestic level in an 'open' and 'express' manner, i.e. in written law. The practical and operational consequences of this recognition can be fully understood in the light of Article 11, according to which 'the principles of local self-government as are enshrined in the constitution or domestic legislation' shall be protected by judicial remedies that local authorities can activate. Therefore, the written principles represent the standards for courts ruling on the recourses submitted by local authorities against acts infringing their local autonomy⁴¹.

104. The Spanish Constitution of 1978 explicitly recognises local self-government (*autonomía local*) but does not provide a definition of it. Article 137 identifies the basic local government units that are present in the country (municipalities, provinces and eventually Autonomous Communities) and recognises them as constituent parts of the State⁴². It also establishes that all those entities "shall enjoy self-government for the management of their respective interests". Article 140 lays down the constitutional principles for the municipalities⁴³ and Article 141 for provinces.⁴⁴ Finally, local finances are dealt with by Article 142.⁴⁵

105. However, since its earlier decisions, the Constitutional Court developed the principle of "institutional guarantee of local self-government", considering that local autonomy is a general principle of the territorial organisation of the State⁴⁶. This implies, among other elements, the right of the local government units to participate in the governance and decision making on matters that affect the local citizens. The organs of the said units must have powers and competences. On the contrary, the legislator (either national or regional) cannot minimise or reduce this autonomous domain of decision making below a recognisable level.⁴⁷ As the same Constitutional Court recognised, "This notion is very similar to the one that was later embraced by the 1985 European Charter of Local Autonomy (ratified by Spain in 1988), whose art. 3 ('Concept of local autonomy') establishes that 'by local autonomy is understood the right and effective capacity of local entities

41 Congress of Local and Regional Authorities, A contemporary commentary by the Congress on the Explanatory Report to the European Charter of Local Self-Government, CG-FORUM (2020)02-05prov, 12 February 2020, para 19.

42 Article 137: "The State is organised territorially into municipalities, provinces and the Autonomous Communities that may be constituted. All these bodies shall enjoy self-government for the management of their respective interests".

43 Article 140: "The Constitution guarantees the autonomy of municipalities. These shall enjoy full legal entity. Their government and administration shall be vested in their Town Councils, consisting of Mayors and councillors. Councillors shall be elected by residents of the municipality by universal, equal, free, direct and secret suffrage, in the manner provided for by the law. The Mayors shall be elected by the councillors or by the residents. The law shall lay down the terms under which an open council of all residents may proceed".

44 Article 141: "1. The province is a local entity, with its own legal entity, arising from the grouping of municipalities, and a territorial division designed to carry out the activities of the State. Any alteration of provincial boundaries must be approved by the Cortes Generales in an organic act. 2. The government and autonomous administration of the provinces shall be entrusted to Provincial Councils (Diputaciones) or other Corporations that must be representative in character. 3. Groups of municipalities other than provinces may be formed. 4. In the archipelagos, each island shall also have its own administration in the form of *Cabildo* or Insular Council".

45 Article 142: "Local treasuries must have sufficient funds available in order to perform the tasks assigned by law to the respective Corporations, and shall mainly be financed by their own taxation as well as by their share of State taxes and those of Self-governing Communities".

46 The "institutional guarantee" of local self-government has been developed firstly by German scholars during the Weimar Republic and later in the Federal Republic of Germany. It was retaken by Spanish scholars and by the Spanish jurisprudence after 1978. It is based on the identification of some core features of local self-government that identify the concept, which elimination implies the elimination of the self-government itself. It has some similarities with the theory of the "essential core of fundamental rights". See L. Parejo Alfonso, *Garantía institucional y autonomías locales*, Madrid, IEAL, 1981. More recently, among others, see J. Fernández-Miranda Fernández-Miranda, *Principio de autonomía local y la posible superación de la teoría de la garantía institucional*, *Revista de Administración Pública*, 2008, pp. 113-156.

47 STC 4/1981, de 2 de febrero, FJ 3, and STC 32/1981, de 28 de julio, FJ 3. Those precedents have been followed by posterior judgments: STC 27/1987, de 27 de febrero, FJ 2, STC 170/1989, de 19 de octubre, FJ 9, STC 109/1998, de 21 de mayo, FJ 2. See also STC 35/1982, of 14 June 1982, establishing that local government autonomy is construed as the capacity of local bodies to formulate their own public policies; STC 240/2006, of 20 July, in which local self-government is identified as a guarantee, involving a constitutional protection of the minimum content of local decision making.

to order and manage an important part of public affairs, within the framework of the law, under their own responsibility and for the benefit of its inhabitants"⁴⁸.

106. This principle has to be respected by all the legislators, national and regionals. It is the standard the Constitutional Court applies to review the legislation, including the national legislation setting the basic principles of local self-government, "as the recipients of art. 137 CE are all public powers, and more specifically all legislators"⁴⁹.

Nevertheless, in the recent years, especially after the enactment of the LRSAL, scholars questioned the doctrine of the "institutional guarantee", considering that it is insufficient to avoid the re-centralisation of competence and, in general, a regression in the level of local self-government⁵⁰.

107. However, in the light of the respect of Article 2 of the Charter, we should consider that, in addition to this constitutional framework, there is extensive and systematic legislation, recognising and regulating different aspects of local government, that has often been inspired by Charter⁵¹.

108. For these reasons, the rapporteurs conclude that the requirements of Article 2 of the Charter are complied with in Spain.

3.2 Article 3 – Concept of local self-government

Article 3 – Concept of local self-government

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

3.2.1 Article 3.1

109. The main question that must be addressed under this heading is whether, in the present situation, Spanish municipalities and provinces regulate and manage a "substantial share of public affairs under their own responsibility and in the interests of the local population". This provision requires an assessment which takes into account the rather "subjective" and relative nature of such concepts as "ability", "a substantial share of public affairs", "under their own responsibility" and "in the interests of the local population" since no official or universal method of measuring such substantial character has yet been developed. The question must be addressed considering the historical evolution, the culture and the constitutional traditions of the country under analysis. It is also closely linked to the assessment of the compliance with other parts of the Charter, such as Articles 4, 8 and 9.

110. In order to assess compliance with this provision, both legislative and factual aspects should be taken into consideration.

111. The Spanish government system is one of the most decentralised in Europe: all together the regions and local authorities manage more than half of the public expenditures in the country.

48 STC 159/2001, de 5 de julio, FJ 4.

49 STC 109/1998, de 21 de mayo, FJ 2; STC 11/1999, de 11 de febrero, FJ 2; STC 240/2006 FJ 8.

50 See R. Gracia Retortillo, *La LRSAL ante el Tribunal Constitucional: la afectación a la autonomía local*, in *Anuario del Gobierno Local*, 2015-2016, referring to SSTC 41 y 111/2016 and STC 107/2017. See also, even before the enactment of the LRSAL, F. Velasco Caballero, *Derecho Local. Sistema de fuentes*, Marcial Pons, 2009, p. 170.

51 T. Font i Llovet, A. Galán Galán, *El gobierno local en los aniversarios de la Constitución y de la Carta europea de la autonomía local*, in *Anuario de gobierno local*, 2018, p. 11 ff.

SUBNATIONAL GOVERNMENT FINANCE

EXPENDITURE	% GDP		% GENERAL GOVERNMENT (same expenditure category)		% SUBNATIONAL GOVERNMENT	
	SUBNATIONAL DATA		LOCAL DATA ONLY			
TOTAL EXPENDITURE (2013)	21.2%	5.8%	48.0%	13.1%	100%	100%
CURRENT EXPENDITURE	19.4%	5.2%	-	-	91.2%	90.5%
STAFF EXPENDITURE	8.4%	1.9%	77.2%	17.8%	39.7%	33.5%
INVESTMENT	1.4%	0.5%	64.5%	23.0%	6.5%	8.5%

Source: OECD <https://www.oecd.org/regional/regional-policy/profile-Spain.pdf>

112. The local autonomy is recognized in arts. 137 and 140 of the Constitution. As stated by the Constitutional Court, «it is configured as an institutional guarantee with a minimum content that the legislator must respect and that is specified, basically, in the 'right of the local community to participate through its own organs in government and administration of all matters that concern it, graduating the intensity of this participation according to the existing relationship between local and supralocal interests within such matters or matters. For the exercise of this participation in the government and administration insofar as it concerns them, the representative bodies of the local community must be endowed with the powers without which no regional action is possible' (STC 32/1981, FJ 4)» (STC 40/1998, of February 19, FJ 39).

113. Municipalities (as well as provinces and islands), enjoy several powers and prerogatives which are usual for public, governmental bodies⁵²:

- They enjoy the power of eminent domain, that is, they can expropriate private property for different justified purposes, for instance for the sake of urban policies or for the construction of public infrastructures.
- They have rulemaking capacity. The rules approved by Municipalities (*ordenanzas municipales*) regulate important aspects of human social behaviour and can establish administrative sanctions for those individuals and firms who contravene them.
- They can impose taxes, levies and special contributions, with due respect of the requirements laid down by national or regional legislation.
- They can approve comprehensive and detailed plans in many fields, such as land use, environmental protection and transports.
- They have the power to impose administrative sanctions and fines on the wrongdoers.
- They have the capacity to determine their internal structure, with due respect to national and regional laws and regulations.

114. As stated by the Constitutional Court in STC 159/2001 of July 5, FJ 5 (reiterated in STC 240/2006), the notion of local autonomy accepted in Spain “is very similar to the one that was later accepted by the European Charter of Local Autonomy of 1985 (ratified by Spain in 1988), whose art. 3 (“Concept of local autonomy”) establishes that ‘local autonomy means the right and effective capacity of local entities to order and manage an important part of public affairs, within the framework of the law, under their own authority, responsibility and for the benefit of its inhabitants’”.

115. For these reasons, rapporteurs consider that Article 3.1 of the Charter is fully respected in Spain.

3.2.2 Article 3.2

116. Article 3.2 is the main statement of the democratic principle in the provisions of the Charter. The right of self-government must be exercised by democratically constituted authorities. Spain did not ratify article 3, paragraph 2. However, this paragraph is mentioned in the preamble of the Law n° 57/2003⁵³, concerning the relationship between elected councils and executive bodies in bigger municipalities, and by several decisions of the Constitutional Court⁵⁴.

⁵² LRBRL. Article 4.

⁵³ Ley n° 57/2003, de 16 de diciembre, de medidas para la modernización del gobierno local, which preambles states (referring to the form of government established for bigger municipalities): “This configuration is totally compatible with the European legal model of local government, designed in its essential aspects in the European Charter of Local Autonomy, whose article 3.2 provides that local collegiate elective bodies ‘may have executive bodies responsible to themselves’”.

⁵⁴ In the STC 161/2013 the Constitutional Court considered that the existence of non-elective executive bodies is not contrary to the principle of local autonomy, provided that their external control by the elected bodies is ensured.

117. The central role played by the elected assemblies is evident in municipalities. Especially relevant is the decision STC 111/2016, which declared unconstitutional the provision of the LRSAL attributing, in exceptional circumstances, to the executive body the power to approve the budget. According to the Court, “the will of the local community is fulfilled through the attribution of competencies and sufficient participation to local entities”⁵⁵. Autonomy and democracy are, therefore, inextricably linked, as specifically provided for in the preamble to the European Charter of Local Autonomy, to which the Constitutional Court explicitly alludes.

118. Although provincial councils are not directly elected in Spain (as in other European countries)⁵⁶ there are not impediment for Spain to formally accept Article 3.2 for municipalities and islands (since, at present, the island councils are directly elected both in the Balearic and Canary Islands).

3.3 Article 4 – Scope of local self-government

Article 4 – Scope of local self-government

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
3. Public responsibilities shall generally be exercised, in preference, by those authorities who are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

3.3.1 Article 4.1

119. Article 4, paragraph 1 of the Charter requires that the basic powers and responsibilities of local authorities are prescribed by the constitution or by statute, so as to ensure predictability, permanence and protection for the benefit of local self-government. Therefore, the tasks of local authorities should not be assigned on an *ad hoc* basis and should be properly enshrined in written parliamentary legislation. Establishing local powers and competences by means of administrative regulation should be avoided and goes against the spirit of the Charter⁵⁷.

120. The current system of competences of local authorities is based on Law n° 7/1985 LBRL, as amended by Law n° 27/2013 LRSAL. According to Article 7 LBRL, “1. The powers of the Local Entities are their own or attributed by delegation. 2. The powers of the Municipalities, Provinces, Islands and other territorial Local Entities may only be determined by Law and are exercised autonomously and under their own responsibility, always attending to due coordination in their programming and execution with the other Public Administrations”. Article 9 establishes that “The rules of development of this Law that affect the Municipalities, Provinces, islands or other local territorial entities may not limit their scope of application to one or more of said entities with a singular character”.

121. The principles on municipal competences are established by Articles 25-27, which is complemented by national and regional legislation. As for the provincial competences, the national legislation is not as detailed and exhaustive as it is when it deals with municipalities. Therefore, the role, services and responsibilities of the provinces are mainly regulated by regional legislation. However, national legislation establishes a set of minimum competences to be discharged by the provinces, in Article 36.1 of Law 7/1985.

122. Therefore, it appears to the rapporteurs that overall Article 4, paragraph 1, is respected in Spain.

⁵⁵ STC 111/2016, FJ 8, declaring unconstitutional the *Disposición adicional 16ª* of the LBRL introduced by the LRSAL: “Attributing to the local government executive the competence to approve budgets and depriving the plenary of it (even if exceptionally) supposes a “huge” sacrifice for the democratic principle, which cannot be compensated with the eventual benefits that, by avoiding situations of institutional blockade, may have on the principle of budgetary stability”.

⁵⁶ According to the Contemporary Commentary, para 39, “This provision means that indirect or second-degree elections of local councils or assemblies are inconsistent with the Charter”.

⁵⁷ Contemporary Commentary, para 49.

3.3.2 Article 4.2

123. According to Article 4, paragraph 2 local authorities must have the right to exercise their initiative on matters not explicitly excluded from their competence by law. In addition, they must have “full discretion to exercise their initiative”. Restrictions on local bodies’ full discretion can also stem from management, fiscal and budgeting rules that require a sound legal basis for spending⁵⁸.

124. In Spain, the issue of the “*competencias impropias*” (competences traditionally exercised by the municipalities due to their proximity to the citizens and in response to their direct demands, although not explicitly attributed or delegated to them) has been debated for decades and it was addressed by the Congress in the 2013 report. These “*competencias impropias*” are not explicitly provided for by law (but nonetheless hitherto assumed to comply with LBRL, which establishes, in Article 2, the principle of the “right of intervention in every field concerning the circle of their own interests”), They concern personal services and physical environment services. The provision of services that results from these competences is not fairly compensated; no economic resources are made available for their implementation.

125. The LRSAL reform, in 2013, was aimed at eliminating or at least greatly reducing this phenomenon. Article 25.1 of the LBRL, which allows municipalities to “promote all kinds of activities and provide all public services that contribute to satisfy the needs and aspirations of the neighborhood community”, was kept firm, although a precision was introduced, limiting the general competence clause “within the limits provided by this article”. For this aim, the law provided for a strict list of responsibilities classified either as “held in own right” (*competencias propias*) or “delegated” (*atribuidas por delegación*). In addition, Article 7.4, gave explicit recognition to the “*competencias impropias*”⁵⁹, at the same time it introduced some conditions to assume them: the Constitutional Court definite Article 7.4 as “a new general clause for municipal competences”.⁶⁰

126. Therefore, the LRSAL does not prevent the *municipios* from assuming responsibilities outside the list of Article 25.2⁶¹, but subject to two specific substantive conditions (Article 25 and Article 7.4 of the LBRL, as modified by the LRSAL):

- a) when the assumption of a “non-standard” responsibility is in line with the constraints of the legislation on budgetary stability and financial sustainability of the *municipio* concerned;
- b) when the exercise of the competence does not imply a “duplication” of competence in respect to other administrative tiers⁶². In addition, also some procedural conditions are established, in terms of prior reports of the competent Administration by reason of matter, in which the absence of duplications is pointed out, and of the Administration that has attributed financial supervision over the financial sustainability of the new competences⁶³.

127. Although the LRSAL does not prohibit the possibility of developing improper powers, this will only be possible if the municipality has a healthy economic situation and as long as improper competition does not produce duplication.

128. The rapporteurs consider this rationalisation of the “improper competences” as a positive development, contributing to improve the financial situation of the municipalities. Nevertheless, the impact on local autonomy cannot be underestimated. During the monitoring activity the delegation was informed that, in practice, it is almost impossible for some municipalities, especially for small municipalities, to undertake “*competencias impropias*”. At this respect, as on many other issues, an enormous difference exists between the bigger towns and the small municipalities. The delegation was informed that the situation of small municipalities is even more problematic in the non-insular unprovincial Autonomous Communities, where the province, as local authority which tasks of coordination and support to small municipalities, does not exist.

129. During the consultation process after the monitoring activity, the Spanish government pointed out that the LBRL recognises the assistance function of the Provincial Councils to the municipalities, especially those

58 Contemporary Commentary, para 59.

59 The Constitutional Court considered the municipal competences of Article 7.4 of the LBRL as “*competencias propias generales*”: STC 41/2016, FJ 10.

60 STC 41/2016, FJ 11.b; FJ 12.b.

61 The Constitutional Court considers that the list of Article 25.2 is no a “*numerus clausus*”: STC 41/2016, FJ 10.b.

62 LRSAL also abrogated Article 28 of the LBRL, which established the so-called “*competencias complementarias*”.

63 For a commentary to these provisions, see T. Font i Llovet, A. Galán Galán, *La reordenación de las competencias municipales: Una mutación constitucional?*, in *Anuario de Gobierno Local*, 2013, 11 ff. The Constitutional Court rejected the challenges against this provision: STC 107/2017, FJ 3.

with a smaller population. In fact, a series of basic services or benefits that are compulsory public services or respond to competences that constitute the basic nucleus of municipal autonomy are attributed as their own competencies (art. 36.1 LBRL). In addition, the government highlighted that the LBRL attributes to the uniprovincial Autonomous Communities the competences, means and resources that correspond to the Provincial Councils (art. 40 LBRL). In this way, the municipalities that are in the territorial sphere of a uniprovincial Autonomous Community are insured by law with the aforementioned assistance function. Finally, the Spanish government highlighted that it is working to a reform aimed at improving the inter-administrative collaboration and co-governance, giving an essential role to the Provincial Councils, reinforcing their assistance especially towards small municipalities.

130. The competences of the provinces are more limited. They are not empowered by a “general competence”. Their tasks are limited to those attributed by the State or by the Autonomous Communities.

131. Considering the limits some local authorities are experiencing, the rapporteurs consider that Article 4, paragraph 2, is only partially respected in Spain.

3.3.3 Article 4.3

132. Article 4, paragraph 3 of the Charter articulates the general principle of subsidiarity. It establishes that “Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy”.

133. This principle is clearly upheld in national law (see Article 2.1 of the LBRL)⁶⁴ as a guiding principle for State and regional legislation assigning powers to local authorities, and it is also included in the most recent statutes of the *Comunidades autónomas*. Most of the new generation Statutes explicitly adopt the principle (see Article 84, paragraph 3 of the Statute of Catalonia, which directly links the principle to the Charter; Article 89.2 of the Statute of Andalusia; Article 64.2 of the Basque Country Statute), which is also included in many regional laws on local government. During the consultation after the monitoring activity, the FEMP pointed out that the LRSAL has reduced the importance of this principle in the attribution of powers to local authorities. Whereas previously the principles that governed this attribution were those of decentralisation and proximity, now these are subordinated to those of effectiveness and efficiency and strict compliance with budgetary stability and financial sustainability regulations (article 2.1 LBRL).

134. Considering the legal framework, at national and regional level, the rapporteurs consider that Article 4.3 of the Charter is respected in Spain.

3.3.4 Article 4.4

135. Article 4, paragraph 4, provides that “Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law”. The law may certainly introduce limitations on the powers given to local authorities, but such limitations should be exceptional, based on objective reasons and interpreted narrowly. In addition, overlapping responsibilities can become a threat to local autonomy⁶⁵.

136. In Spain, the main concern with respect to this article has always been the clear definition of the competences of the different levels of government. The LRSAL tried to apply the principle of “one competence, one administration”, especially with the aim of reducing public expenditure. This principle has been entrenched in Article 25.5 of the LBRL⁶⁶.

137. During the monitoring activity, the delegation was informed by many interlocutors that this issue has not been fixed. The problem of the delimitation of competences remains unsolved and there are still cases in which the distribution of competences of the territorial administrations is not sufficiently clear and requires greater specificity.

64 This article lists several principles that the legislators (national and regional) must follow in attributing competences to local authorities: decentralisation, proximity, effectiveness and efficiency, and strictly subject to the regulations of budgetary stability and financial sustainability. The original text (before the amendments introduced by the LRSAL) only referred to decentralisation and proximity.

65 Contemporary Commentary, para 66-67.

66 Article 25.5 LBRL: “The Law shall determine the municipal competence in question, guaranteeing that there is no simultaneous attribution of the same competence to another Public Administration”.

138. This situation has been aggravated by the consequences that the management of the health and economic crisis caused by the COVID-19 pandemic is having on the different public administrations. In this way, local authorities face new needs that must be met by public administrations, sometimes without being clear about who the competence is, with the consequent increase in the cost of providing many public services.

139. The central government, the representatives of the Autonomous Communities, the representatives of the local authorities, including the FEMP, all agreed on the necessity of a new "*Pacto local*" (Local Compact), which should address several issues, including a new division of competences between levels of government.

140. Rapporteurs are aware that Spain is a strongly decentralised State, with a very complex territorial structure and a sophisticated system of division of competence. However, they encourage all the stakeholders in engaging in a dialogue with the aim to continue improving this system, adapting it to the new challenges.

141. Therefore, the rapporteurs consider that Article 4, paragraph 4, is not fully respected in Spain.

3.3.5 Article 4.5

142. Article 4, paragraph 5, refers to delegated responsibilities, establishing that local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.

143. In Spain, according to article 7.3 of the LBRL, "The State and the Autonomous Communities, in the exercise of their respective powers, may delegate the exercise of their powers to the local authorities". Likewise, it is established that the delegated powers are exercised in the terms established in the delegation provision or in the delegation agreement, as appropriate, subject to the rules established in article 27 of the above mentioned law, and will provide management techniques and control of expediency and efficiency. This article contains a list of powers which may be delegated (not exhaustive):

- a. Surveillance and control of environmental pollution.
- b. Protection of the natural environment.
- c. Provision of social services, promotion of equal opportunities and prevention of violence against women.
- d. Conservation or maintenance of healthcare centers owned by the Autonomous Community and creation, maintenance and management of publicly owned nursery schools for the first cycle of early childhood education.
- f. Carrying out complementary activities in educational centers.
- g. Management of cultural facilities owned by the Autonomous Community or the State.
- h. Management of sports facilities owned by the Autonomous Community or the State, including those located in educational centers when they are used outside of school hours.
- i. Inspection and sanction of establishments and commercial activities.
- j. Tourism promotion and management.
- k. Communication, authorisation, inspection and sanction of public shows.
- l. Liquidation and collection of taxes of the Autonomous Community or the State.
- m. Registration of associations, companies or entities in the administrative records of the Autonomous Community or the State Administration.
- n. Management of unified information offices and administrative processing or cooperation with the educational Administration through the associated centers of the National University of Distance Education.

144. Article 27 establishes that the delegation must determine the scope, content, conditions and duration, which may not be less than five years, as well as the efficiency control reserved to the delegating administration and the personal, material and economic means, that it assigns, without additional costs for the Public Administration. The effectiveness of the delegation will require its acceptance by the interested municipality.

145. No issues have been raised during the monitoring activity.

146. Therefore, it appears to the rapporteurs that Article 4, paragraph 5, is respected in Spain.

3.3.6 Article 4.6

147. Article 4 para. 6 of the Charter provides that “local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly”.

148. At national level, the main institution is the National Commission for Local Administration, which is regulated by the Articles 117-119 of the LBRL⁶⁷. The Commission is integrated by an equal number of members appointed by the government and by the FEMP. It must meet at least twice a year. The Commission issues advice on draft laws and draft regulations affecting local government. It can also make proposals and suggestions to the government.

149. Consultation rights are very developed at regional level. In this field, several Autonomous Communities have changed their Statutes and laid down new principles regarding the rights of local authorities to participate to the decision-making process at regional level, creating new areas of co-operation between autonomous communities and local authorities.

150. For example, Catalonia created (Article 85 of the Statute) a *Consejo de Gobiernos Locales*, as an organ representing *municipios* and *veguerías* (the only second tier of local government recognised by the Statute) in the legislative process and in taking decisions on regulations and acts of general planning. The *Consejo* has to be regulated by an ordinary law of the autonomous communities. Similar institutions have been created in Navarra, Comunidad Valenciana, Galicia, Andalucía, Castilla y León, Aragón, although the effectiveness of such bodies has been questioned by some scholars⁶⁸. The interlocutors pointed out many interesting tools of consultation developed by the Autonomous Communities. To give just one example, the Basque Country developed a system of “*alerta temprana*” (early warning)⁶⁹, according to which the Commission of Local Governments of the Basque Country, of strictly municipal composition, prepares a preliminary report on the draft laws or legislative decrees, to analyze the adequacy of such draft or projects to the local autonomy.

151. During the monitoring activity, the rapporteurs received inconsistent information. While some sources have stated that the central government consults the local authorities, namely the FEMP, in due time and in appropriate way in the planning and decision-making process for all matters which concern them directly, others have declared the opposite and stressed the need to improve such consultation. It has especially been pointed out the necessity of including representatives of local authorities in the main body of consultation between the State and the Autonomous Communities: the Conference of Presidents.

152. The issue was also raised by the Recommendation 336 (2013), which asked the Spanish government to “define in law the relationship between the State, the Conference of Presidents of Autonomous Communities and the FEMP”.

153. Only recently the President of FEMP has been invited to attend the meetings of such institution, but without any legal framework⁷⁰. In addition, the FEMP may attend the sectorial conferences between the State and the regions, but without the right to vote (the Conferences on Public Administration; Housing, Urbanism and Land; Agriculture and Rural Development; Fisheries; Consumption; the Interterritorial Council for Social Services and the Unit Care System). A special mention is worthy the “*Conferencia Sectorial del Plan de Recuperación, Transformación y Resiliencia*”. This Sectorial Conference is a coordinating body between the State and the regions, created by Royal Law-Decree n°36/2020, of December 30, to establish routes of cooperation in the implementation of European funds from the Recovery and Resilience Mechanism. In this Conference the local authorities participate through the FEMP, with right to vote⁷¹. The participation of the

67 See also Real Decreto n° 427/2005, de 15 de abril, por el que se regula la composición, las funciones y el funcionamiento de la Comisión Nacional de Administración Local, que ha sido modificado por el Real Decreto n° 142/2012, de 27 de julio.

68 T. Font i Llovet, A. Galán Galán, *El gobierno local en los aniversarios de la Constitución y de la Carta europea de la autonomía local*, in *Anuario de gobierno local*, 2018, p. 35.

69 Ley n° 2/2016, de 7 de abril, de Instituciones Locales de Euskadi, Article 87.

70 The conference has been regulated by the Law n° 40/2015. On the participation of the FEMP see <http://www.femp.es/comunicacion/noticias/abel-caballero-califica-de-hito-historico-la-participacion-de-la-femp-en-la-71> According to the Royal Law-Decree, “The Sectorial Conference of the Recovery, Transformation and Resilience Plan may summon to its meetings the representatives of the local administration that are designated by the Spanish Federation of Municipalities and Provinces, as the association of local entities at the state level with the greatest implementation”. However, in an agreement between the FEMP and the Autonomous Communities, during the first meeting of the

FEMP is also contemplated in the regulations of the three sectoral conferences constituted in 2020: that of the 2030 Agenda, that of the demographic challenge and that of professional qualifications. And the Federation has been invited to the meetings of the Interterritorial Council of the National Health System, the Conference of Presidents or the Conference on Affairs Related to the European Union.

154. During the consultations after the monitoring activity, the Spanish government pointed out that it is working on a draft reform of the sectoral conferences, including the participation of the President of the FEMP or the person appointed by him in the Conference of Presidents and sectoral conferences.

155. The rapporteurs appreciate the recent developments of the consultation process at national level. However, they consider that there is room for improvement, especially in the perspective of an initiative towards an important local government reform, with the aim of realising a “second decentralisation”.

156. Therefore, the rapporteurs consider that Article 4, paragraph 6, is only partially respected in Spain.

3.4 Article 5 – Protection of local authority boundaries

Article 5 – Protection of local authority boundaries

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

157. This article requires that local communities should be consulted in case of changes of local authorities' boundaries.

158. Article 13 of the LBRL establishes that “The creation or suppression of municipalities, as well as the alteration of municipal boundaries, shall be regulated by the legislation of the Autonomous Communities on local regime, without the alteration of municipal boundaries may imply, in any case, modification of the provincial boundaries. In any case, they will require a consultation of the interested municipalities”. The details of the procedure are specified by the Royal Decree n° 1690/1986, of July 11, which approves the Regulation of Population and Territorial Demarcation of Local Entities⁷².

159. During the monitoring activity the issue was not raised. Although local government is highly fragmented and there are many small municipalities experiencing serious problems in managing their tasks, consolidation is not an option in Spain. The LRSAL introduced several measures aimed at encouraging voluntary mergers (as the increase in financing, the preference in the allocation of local cooperation plans or subsidies, the dispensation in the provision of new mandatory services as a consequence of the population increase)⁷³, but they have had a limited application in practice. The number of municipalities has not decreased, whereas the preferred solution to remedy the high fragmentation has been the inter-municipal cooperation.

160. The rapporteurs consider that the requirements of Article 5 are fully satisfied in Spain.

3.5 Article 6 – Appropriate administrative structures and resources

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

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

Conference, on January 21, 2021, it was agreed for the participation of the FEMP with right to vote: <http://www.femp.es/comunicacion/noticias/la-femp-participa-en-la-constitucion-de-la-conferencia-sectorial-del-plan-de> 72 Real Decreto n° 1690/1986, de 11 de julio, por el que se aprueba el Reglamento de Población y Demarcación Territorial de las Entidades Locales, Articles 9-11.

73 The LRSAL amended Article 13 of the LBRL. On this provision, see the decision of the Constitutional Court STC 41/2016, FJ 6, according to which “It is the municipalities who have, through an agreement, the power to make a final decision on the merger, without be submitted, therefore, to the will of the autonomous community or the State”.

3.5.1 Article 6.1

161. Article 6, paragraph 1 of the Charter provides that local authorities shall be able to determine their own internal administrative structure: the power to organise their own affairs is accordingly a part of the autonomy enjoyed by local entities.

162. In Spain, the national law (LBRL) recognises the normative power of local authorities also regarding their internal administrative organisation. They can approve organisational by-laws (*reglamento orgánico*), which may respect the basic provisions of State legislation in the matter, as well as the implementing legislation approved by the Autonomous Communities within their competences. The organisational autonomy is firmly considered as an important part of local autonomy, by scholars and case-law⁷⁴.

163. Therefore, the rapporteurs consider that the requirements of Article 6, paragraph 1, are fully satisfied in Spain.

3.5.2 Article 6.2

164. Article 6, paragraph 2 of the Charter refers to the conditions of service of local government employees: they shall be such as to permit the recruitment of high-quality staff on the basis of merit and ability. The power to hire their own staff and set employee remuneration is a relevant factor highlighting the organisational and institutional autonomy of local governments⁷⁵.

165. Title VII of LBRL ensures the legal basis of human resources at local level, as well as regional and sectorial law.

166. In Spain, local government staff may be of two different kinds: civil servants (*funcionarios*) and contractual employees (*personal laboral*)⁷⁶. Civil servants are considered under public law and enjoy a special legal status (in principle, they cannot be fired or made redundant). The recruitment of this type of employee, their rights, services, duties and responsibilities are regulated by administrative law. Contractual employees, on the other hand, are governed by private employment law. Their salaries and working conditions are regulated in a different way: they sign individual contracts; they bargain and negotiate collective agreements with the corresponding local authority (usually the big ones). In terms of personnel management, each local authority is supposed to work as an independent “company”, with its own staff⁷⁷, although within strict budgetary limits, introduced by the LRSAL. Especial limitations were introduced for the number of positions which can be covered by additional staff⁷⁸. During the monitoring activity no issues were raised.

167. In addition, there is a special type of local employee, who has traditionally been recruited and managed by the national government. These so-called “civil servants having a national qualification” or “national-wide qualified” employees (*funcionarios de Administración Local con habilitación de carácter nacional*) are the only ones who enjoy “professional mobility” across the Spanish territory. In other words, during their career, they may obtain positions within the administration of different local authorities across the country, by participating in “ad hoc” staffing procedures. The status of this special type of civil servant is also regulated by the State (the essential rules and elements) and by the Autonomous Communities. More detailed rules were introduced by the LRSAL⁷⁹. Clearly, the role of such special civil servants is of high importance to each and every local

74 The relationship between the local organisational by-laws and the national and regional legislation is highly discussed in scholarships and case-law. There is a certain convergence in considering that local by-laws prevail over national regulations, in its reserved field, with the only exception of the basic principles: https://www.acalsl.com/wp-content/uploads/2020/05/STS_1714_2009_potestad_normativa_Reglamento_organico.pdf. L. Parejo Alfonso. *La potestad de autoorganización de la Administración Local*, in *Revista de Documentación Administrativa*, Estudios, 1991, pp. 13-43.

75 Contemporary Commentary, para 104.

76 See Ley n° 7/2007, de 12 de abril, del Estatuto Básico del Empleado Público y Ley n° 40/2015 de 1 de octubre, de Régimen Jurídico del Sector Público. The latter is part of the reforms of the public administration implemented as a consequence of the recommendations of the special Commission to Reform Public Administration (CORA), which activity was largely examined by the 2013 report of the Congress.

77 A. M. Moreno, *Local government in Spain*, p. 617 f.

78 Article 104 bis LBRL.

79 Article 92 bis LBRL, added by the LRSAL. See also RD 128/2018, que regula el régimen jurídico de funcionarios de Administración local con habilitación nacional.

authority, because they discharge (in an exclusive way) crucial legal and managerial functions⁸⁰. These public servants are assigned functions involving the use of authority and certification powers and to provide legal advice, as well as the control and internal auditing of finances and budgeting, and for accounting, treasury and tax-collection.

168. In conclusion, the rapporteurs consider that Article 6.2 of the Charter is respected in Spain.

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

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

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

3.6.1 Article 7.1

169. Article 7.1 seeks to ensure that citizens are free to serve as elected representatives and are not prevented from holding political office owing to financial or material considerations. Nobody should be deterred from standing for election at local level; once elected, local councillors should not be prevented from discharging their duties effectively⁸¹.

170. In Spain, local representatives are elected for four years and cannot be recalled⁸². Their status is regulated by the LBRL, which establishes their rights and duties (Articles 73-78). During the monitoring activity, no issues were raised concerning this paragraph.

171. Therefore, the rapporteurs believe that Article 7.1 of the Charter is respected in Spain.

3.6.2 Article 7.2

172. Article 7, paragraph 2, refers to an appropriate financial compensation for elected representatives. The aim of the paragraph, in connection to paragraph 1, is to ensure that local elected representatives receive “appropriate financial compensation” and to avoid the conditions of office preventing, limiting or even excluding potential local candidates from standing for office because of financial considerations.

173. In Spain, the LBRL (Articles 75 to 78) establishes the possibility that elected representatives can receive remuneration and compensation for the performance of the position. The economic perceptions that councilors receive are the following:

- Salaries when they carry out the position on a full-time basis.
- Salaries when they carry out the position on a part-time basis.
- Attendance for the effective attendance at the sessions of the plenary, in case they do not have the right to a salary;
- Compensation for the actual expenses incurred in the exercise of their position.

174. Article 75.1 LBRL establishes that “The members of the local authorities will receive remuneration for the exercise of their positions when they perform them with exclusive dedication, in which case they will be registered in the general Social Security Regime, with the local authorities assuming the payment of the corresponding contributions”. It will be the Plenary, at the proposal of the president, who determines within the global budget allocation of the local council, the list of positions that are developed under that exclusive dedication regime, setting the amount of the remuneration that correspond to each of them, although always within the limits established by State legislation.

⁸⁰ The Constitutional Court ruled that the system of appointment of local officials with national authorisation (who, according to their regulatory norm, perform secretariat functions, which include public faith and legal advice, and internal control and control of spending) is not contrary to art. 6.2 of the Charter. The principles set in this article are considered respected by access to the civil service body, regardless of whether other criteria are introduced in the specific provision of jobs, equally lawful and having to do with the proper management of the local authority: STC 235/2000, FFJJ 7 and 11.

⁸¹ Contemporary Commentary, para 107.

⁸² Ley Orgánica n° 5/1985, de 19 de junio, del Régimen Electoral General, Article 94.

175. Recommendation 336 (2013) asked Spain to revise legislation in order to fix a minimum and maximum threshold for remunerating local elected representatives in accordance with Article 7.2 of the Charter.

176. Also to address this recommendation and in the framework of the measures adopted to rationalise public expenditures, the LBRL was amended by the LRSAL. A new article was added (Article 75 bis), establishing the thresholds for the full time (*dedicación exclusiva*) elected officials, according to the size (number of inhabitants) of the local authority. Also for budgetary reasons, the law established a ceiling of the elected representatives which can opt for a full-time position, in proportion to the number of inhabitants (Article 75 ter).

177. According to the Budgetary Law for 2014 (Law nº 22/2013)⁸³, the maximum threshold for full-time elected representatives is the following:

Habitantes	Referencia
Más de 500.000	Secretario de Estado
300.001 a 500.000	Secretario de Estado -10%.
150.001 a 300.000	Secretario de Estado -20%.
75.001 a 150.000	Secretario de Estado -25%.
50.001 a 75.000	Secretario de Estado -35%.
20.001 a 50.000	Secretario de Estado -45%.
10.001 a 20.000	Secretario de Estado -50%.
5.001 a 10.000	Secretario de Estado -55%.
1.000 a 5.000	Secretario de Estado -60%

178. As for the half-time elected representatives, the abovementioned law established the threshold only for municipalities with fewer than 1000 inhabitants that cannot have full-time elected members.

Dedicación	Referencia
Dedicación parcial al 75%	30.000 euros
Dedicación parcial al 50%	22.000 euros
Dedicación parcial al 25%	15.000 euros

179. For entities with more than 1,000 inhabitants, they result from the application of the percentage of part-time engagement (75%, 50%, 25%) that corresponds to the maximum amount of reference for the corresponding category of full-time elected representatives.

180. For 2021, the Law of General State Budgets indicates in its twenty-ninth additional provision the maximum limit that the members of the Local Corporations can receive. Above 150,000 inhabitants, the mayor may have a higher salary than that of the Prime Minister:

Habitantes	Referencia-Euros
Más de 500.000.	109.494,57
300.001 a 500.000.	98.545,10
150.001 a 300.000.	87.595,64
75.001 a 150.000.	82.121,45
50.001 a 75.000.	71.172,02
20.001 a 50.000.	60.222,56
10.001 a 20.000.	54.747,30
5.001 a 10.000.	49.273,11
1.000 a 5.000.	43.797,83

83 Disposición adicional nonagésima de la Ley nº 22/2013, de 23 de diciembre, de Presupuestos Generales del Estado para el 2014.

181. In the case of Local Corporations with less than 1,000 inhabitants, the following scale will apply, depending on their dedication:

Dedicación	Referencia–Euros
Dedicación parcial al 75 %.	32.848,41
Dedicación parcial al 50 %.	24.088,65
Dedicación parcial al 25 %.	16.424,78

182. During the monitoring activity, the municipality of Madrid provided specific data on the application of the legislation to the City of Madrid.

183. In the Madrid City Council, in 2021, the elected representatives are exercising their position with the following dedication:

Exclusive dedication: 45 charges

Partial dedication: 9 charges

Without exclusive or partial dedication: 3 positions

Alcalde 108.517,80 €

Presidente del Pleno 106.238,88 €

Primera teniente de Alcaldía 106.238,88 €

Portavoz Grupo Político 101.811,36 €

Delegado/A de Área de Gobierno 101.811,36 €

Delegado/a de Área Delegada 99.597,60 €

Concejal/a Presidente/a de distrito 99.597,60 €

Concejal/A sin responsabilidades de gestión pública 67.291,80

Interlocutors met by the delegation consider that, in general, the remuneration system can be considered adequate and allows, above all, great flexibility to adapt to the needs of each municipality and the personal circumstances of each councilor.

184. Therefore, the rapporteurs consider Article 7, paragraph 2, fully implemented in Spain.

3.6.3 Article 7.3

185. Article 7, paragraph 3, deals with compatibility between the holding of a representative position at local level and other activities, either public or private, establishing that the “functions” and “activities” that cannot be made compatible with holding a local position once the candidate has been elected shall be determined by statute or fundamental legal principles.

186. In Spain, the incompatibilities are determined by several legal provisions., included in the General Electoral Law, which largely correspond (with only a few additions) to those provided for general elections⁸⁴. No issues have been raised during the monitoring activity.

187. Therefore, the rapporteurs consider Article 7, paragraph 3, fully implemented in Spain.

3.7 Article 8 – Administrative supervision of local authorities’ activities

Article 8 – Administrative supervision of local authorities’ activities

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.
3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

⁸⁴ Ley Orgánica n° 5/1985, de 19 de junio, del Régimen Electoral General, Articles 6,177 and 178 for municipalities, Articles 202 and 203 for provinces.

3.7.1 Article 8.1

188. Article 8 of the Charter deals with supervision of local authorities. According to Article 8, paragraph 1, any administrative supervision of the activities of local authorities must be exercised according to such procedures and in such cases as are provided for by the constitution or by statute. The Charter establishes an important principle here in the area of inter-governmental supervision of local authorities: any form of such supervision must be provided for by the constitution or by statute, i.e., the Charter introduces the legality principle into the supervision of a local authority⁸⁵.

189. In line with the requirements of the Charter, in Spain the rules governing the supervision over local authorities and the powers of the central and regional authorities concerned are determined by the law (see above).

190. Therefore, the rapporteurs believe that Article 8.1 of the Charter is fully respected in Spain.

3.7.2 Article 8.2

191. According to Article 8, paragraph 2, of the Charter, the supervision over local authorities can only aim at ensuring compliance with the law and constitutional principles. Expediency control can be used only in case of delegated tasks.

192. In Spain, (see above) the supervision over the acts of local authorities is carried out by the State or the Autonomous communities and it is limited to a control of legality. If the supervision authority considers that the act is illegal, they can only challenge it in courts. No issues have been raised during the monitoring activity.

193. Therefore, the rapporteurs believe that Article 8.2 of the Charter is fully respected in Spain.

3.7.3 Article 8.3

194. Article 8, paragraph 3, deals with the way in which the supervision is exercised in practice, and requires compliance with the principle of proportionality. Under the principle of proportionality, the regional or State body should intervene only to the extent necessary, taking into account the relevance of the public interest at stake, or the seriousness of the legal violation allegedly committed by the local authority⁸⁶.

195. In Spain, no issues have been raised during the monitoring activity. Nor the financial supervision, which has been reinforced in the framework of the introduction, in the Constitution and in the legislation (Organic Law n.2/2012; LRSAL) of the principle of the balanced budget (see above), did raise any special concern by local authorities.

196. Therefore, the rapporteurs consider that Article 8.3 of the Charter is fully respected in Spain.

85 Contemporary Commentary, para 128, See also Recommendation CM/Rec(2019) 3 of the Committee of Ministers to member States on supervision of local authorities' activities (adopted by the Committee of Ministers on 4 April 2019 at the 1343rd meeting of the Ministers' Deputies).

86 Contemporary Commentary, para 139.

3.8 Article 9 – Financial resources

Article 9 – Financial resources of local authorities

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

3.8.1 Article 9.1

197. Article 9, paragraph 1 of the Charter establishes two basic principles in the area of finance. First, local authorities should have their *own* financial resources; the right to “adequate” resources is not absolute but has to be exercised “within national economic policy”. Second, they should be free to decide how to spend those resources. This freedom takes the form of various spending decisions, the most important being the adoption of an annual budget. Any limits and restrictions imposed by higher authorities on local authorities should be specified and justified and aim at ensuring macroeconomic stability and sound financial management⁸⁷.

198. In Spain, the Constitution contains specific provisions stressing the principle of financial sufficiency, by establishing that: «Local treasuries must have sufficient funds available in order to perform the tasks assigned by law to the respective corporations and shall mainly be financed by their own taxation as well as by their share of State taxes and those of Autonomous Communities» (Article 142). Besides these specific constitutional provisions, Law n° 2/2004, of 5 March, on local finances provides a comprehensive regulation of this matter⁸⁸ (see above).

199. Local authorities have their own revenues (*recursos propios*), which include all the different types of income generated by the activity of local authorities either of a fiscal or non-fiscal nature.

200. As a rule, all decisions concerning the revenues and the distribution of resources are taken in an autonomous way by the local authority and must be decided in the municipal budget, which must be approved by the plenary session of the Council. Local authorities do approve their own budgets, without the need of a prior approval by the regional or State agencies. However, for some budgetary operations local authorities require such approvals, for instance when the local entity envisages having recourse to borrowing, above a given ceiling. As for expenditure, it is also decided in an autonomous way and it is only submitted to the ex post accountability control of the internal auditors and the Spanish Court of Audit. Some limitations have been introduced in the framework of the constitutional reform of the Article 135 (balanced budget) and its legislative development. For example, in case there is a surplus, this must be allocated entirely to reduce indebtedness in net terms (Article 32 Organic Law n° 2/2012), with some exceptions, such as the so called “Financially Sustainable Investments” (*Inversiones Financieramente Sostenibles*). In the same perspective, “The income obtained above what is expected will be used entirely to reduce the level of debt public” (Article 12.5 of the Organic Law n° 2/2012).

⁸⁷ Contemporary Commentary, para 147.

⁸⁸ STC 82/2020, FJ 7 referred to several paragraphs of Article 9 (paragraph 1, 2, 4, 5).

201. This is understandable as, as a member of the EU, Spain must comply with the Lisbon Treaty and Protocol no. 12 on the excessive deficit procedure. The national authority is responsible, therefore, not only for its own deficit but also for those of local and regional authorities.

202. Therefore, the rapporteurs consider that Article 9.1 of the Charter is respected in Spain.

3.8.2 Article 9.2

203. Another basic principle, established in Article 9, paragraph 2, requires that local authorities should have sufficient financial resources in proportion to the responsibilities assigned to them by law. This paragraph enshrines the so-called “principle of commensurability” of local authorities’ financial resources. This means that the resources available to local authorities should be sufficient and commensurate with their functions and tasks. To this purpose, any transfer of powers and tasks should be based on careful calculation of the actual service delivery costs to be met by local authorities. The costs of mandatory and delegated tasks might include several factors (such as the socioeconomic structure of residents) in order to produce more precise calculations and avoid arbitrary political decisions⁸⁹.

204. In Spain, all the interlocutors agreed on the need to change the current system of local financial resources, in favour of a new regional and local financing model, which gives the certainty of the resources that each administration can count on, and which takes into account the particularities of local authorities in its distribution, such as demographic factors and geographic dispersion.

205. The issue was also raised by Recommendation 336 (2013), which asked the Spanish government to “ensure that, in accordance with the legislation, each transfer of powers to local authorities is guaranteed by adequate financial resources; (Article 9.2)”.

206. The main concerns are related to the continuing of transfer of competences without adequate resources; the financial difficulties of small and depopulated municipalities; the lack of resources to address the needs of the residents, in terms of social services. It was especially pointed out the lack of a correct calculation of the real costs of social services. Some interlocutors described the existing system as a “perverse financing system, which in fact encourages depopulation”. New criteria must be included, beyond population, such as geographic dispersion, in the calculation of the financial transfers to municipalities.

207. During the consultation process after the monitoring activity, the Spanish government pointed out that, notwithstanding particular cases of municipalities not properly funded and the convenience to introduce technical corrections in the new financing system, the local governments subsector is the level of government that presents the best financial figures: in contrast to Central State and regional governments it has generated substantial fiscal surpluses since 2012, and is the only sector which stock of debt is below the long term reference laid down in article 13 of the Basic Stability Organic Law, for fiscal year 2020, namely, 3% of GDP (see also the Annex 1 on the Evolution of gross fiscal magnitudes 2009-2019). The total accumulated savings of the subsector amounted to 20 billion euros in 2019. Therefore, contrary to some opinions, it is difficult to argue that the sector, in general, presents financial difficulties and lack of resources to address the needs of the residents, in terms of social services.

89 Contemporary Commentary, para 150.

Annex 1

Evolution of gross financial magnitudes 2009 - 2019 (Municipalities, Provinces and islands)

Thousands
of euros

	2009	2010	2011	2012	2013 (*)	2014 (*)	2015(**)	2016(**)	2017(**)	2018(**)	2019(**)
Current revenue	64.267.179	62.993.996	63.419.032	63.631.113	62.532.207	63.995.887	68.234.399	69.477.291	72.818.927	74.407.347	75.903.545
Current expenditure	57.420.815	57.324.273	56.277.786	54.475.911	51.176.887	52.308.223	55.633.329	56.559.772	59.211.617	60.915.923	63.524.907
Gross savings	6.846.364	5.669.722	7.141.246	9.155.202	11.355.319	11.687.663	12.601.071	12.917.519	13.607.310	13.491.425	12.378.638
Financial liabilities	2.795.330	3.294.907	3.240.138	4.207.323	4.810.619	7.335.914	6.073.950	5.381.087	4.811.030	4.703.451	5.533.151
Net savings	4.051.034	2.374.815	3.901.107	4.947.880	6.544.700	4.351.749	6.527.121	7.536.432	8.796.280	8.787.974	6.845.487
Non-financial revenue	77.435.907	72.924.642	67.785.725	66.099.555	64.589.022	66.375.736	70.634.591	71.599.018	75.083.898	77.368.303	78.786.482
Non-financial expenditure	78.206.322	74.687.626	68.088.370	61.946.057	56.980.709	59.172.504	63.556.357	63.373.259	66.589.361	69.667.648	72.930.483
Non-financial balance	-770.415	-1.762.984	-302.645	4.153.498	7.608.313	7.203.233	7.078.235	8.225.759	8.494.537	7.700.655	5.856.000
Cash remanent	17.992.592	16.386.349	13.681.481	21.172.936	22.970.512	25.153.812	27.808.642	30.772.924	35.597.005	37.859.310	39.557.024
Cash remanent for general expenditure	2.889.064	1.322.905	302.904	6.676.978	7.412.504	9.545.640	11.099.882	13.395.891	17.744.393	18.924.051	20.062.540

(*) In FY 2013 and 2014 not including data from municipalities of Basque Country and the foral region of Navarra

(**) Since FY 2015 not including data from the Foral Province of Álava

Source: Ministry of Finance

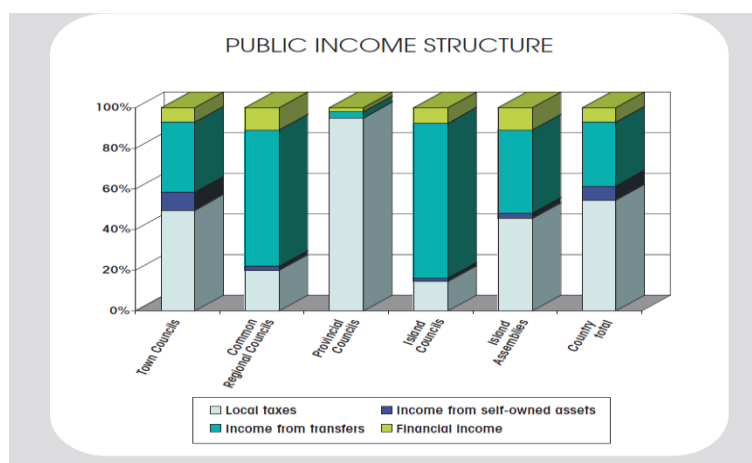
208. However, the rapporteurs consider that these figures cannot substitute the introduction of adequate criteria to assure local authorities sufficient financial resources in proportion to the responsibilities assigned to them by law. They strongly encourage the Spanish government to push forward the announced reform of the local finances.

209. At this stage, the rapporteurs consider that Article 9.2 of the Charter is not fully respected in Spain.

3.8.3 Article 9.3

210. Article 9, paragraph 3, requires that at least part of the financial resources of local authorities must derive from local taxes of which, within the limits of statute, they have the power to determine the rate. The Charter does not state that a local authority's own resources must contain a uniform proportion of local taxes, but it does make it mandatory for "at least" part to derive from local taxes and charges. This part should be large enough to ensure the greatest possible financial independence of local authorities.

211. In Spain, local authorities dispose of their own resources, which represent an important part of their incomes. According to information released by the national tax administration, and corresponding to 2018 figures, own resources amount to 61,1% of the total income of municipalities and 22,4 in the case of provinces (see above). During the monitoring activity, for example, the delegation was told that the income from local taxes and fees in the province of Almería represents between 50 and 60% of the total local income of the municipalities with a population greater than 5,000 inhabitants and between 20 and 40% in municipalities smaller than 1,000 inhabitants.



Source: Ministry of Finance

212. Some interlocutors at local level pointed out the need to improve the fiscal co-responsibility of local governments, giving them greater autonomy to determine their own income and reducing their dependence on transfers from other levels of government. They also pointed out that, to achieve this objective, it is essential to review the main elements of the system, in order to make it more efficient and equitable.

213. The local tax system is built on a series of inflexible and highly unpopular tax bases. In fact, local taxes are highly perceptible by citizens, if we compare them with the main taxes collected by the rest of the administrations, where they either appear hidden behind the prices of goods and services (VAT and special taxes), or they are largely disguised as they are collected as withholdings at source (IRPF). This means that both the national and the regional Administrations can, in times of economic boom or growth, notably increase their collection with reduced political costs, while the local authorities have to adopt much more noticeable measures to increase their collection.

214. In addition, an important part of local taxes is strongly linked to the economic cycle, which compromises the stability of their collection in the medium and long term, essential to ensure the financing of public services. Thus, the evolution of the tax on the increase in the value of urban land (the so-called municipal capital gain) and, above all, of the tax on constructions, installations and work have surely generated financial problems for many Spanish municipalities that opted in their day to expand their services and consequently their recurring expenses charged to current income that are not so much, as evidenced by their collapse with the arrival of the crisis, although during the consultations after the monitoring activity the Spanish government pointed out that, in its view, this rigidity of local taxes with respect to the economic cycle has allowed local governments taxes to fare relatively better in times of the pandemic.

215. The insufficiency of own resources has forced the local financing model to rest on a system of transfers with horizontal inequities that have historically been maintained (and aggravated). Of the 35,8% of total income of local governments consisting of transfers, 20,25% come from central State, in the form of the "participation in State income", an unconditional transfer that constitutes one sources of income for municipal councils, provincial councils, and island councils, but which is not distributed with redistributive criteria.

216. Bigger municipalities pointed out that one of the problems that must be solved is the concentration of the local tax system in taxes with a significant degree of rigidity, whose tax bases evolve without a direct relationship with the economic activity generated in the locality or with the users of the services municipal. During the consultations after the monitoring activity, the Spanish government pointed out that these taxes allow local finances to be isolated from the economic cycle, providing them with a reliable source of funding. Furthermore, even in the most powerful source of income for local governments, the real estate tax, local governments have an important amount of discretion, deciding on the tax rate, between certain thresholds.

217. The rapporteurs encourage the Spanish government to take into account the problems of local authorities' own resources in the context of a broader reform of local finances.

218. Notwithstanding these difficulties, the rapporteurs consider that Article 9, paragraph 3 is complied with in Spain.

3.8.4 Article 9.4

219. Article 9, paragraph 4, refers to the need for the resources available to local authorities to be of a sufficiently diversified and buoyant nature to enable them to keep up as far as practically possible with the actual changes (increases) in the costs for carrying out their tasks.

220. In Spain, the revenues of local authorities may come from different sources (own taxes and fees, transfers, other sources). Local authorities may adapt their own income to the different circumstances: for instance, if the local tax intake goes down for general economic reasons, the local authority may decide to increase local fees and charges paid by local service users (especially in urban areas) as a way to offset the decline. As for the specific transfer awarded by the national government, by which municipalities participate in the tax revenues of the State (*«participación en los tributos del estado»*), it is calculated each year, according to a complex statutory formula, which take into account also price increases, or factors involved in the delivery of services.

221. Some interlocutors pointed out the necessity to consider more carefully the real costs of local services. The rapporteurs consider that this issue should be addressed in the foreseen reform of local finances.

222. However, considering the general framework of local revenues, the rapporteurs consider that Article 9, paragraph 4, is complied with in Spain.

3.8.5 Article 9.5

223. Article 9, paragraph 5 addresses the question of the financial situation of municipalities that are financially disadvantaged due to their being located in economically or geographically weak areas (transition, mountain or island regions), or simply because they are too small to obtain the amount of resources needed to perform their tasks.

224. Recommendation 336 (2013) asked the Spanish government to “assure smaller municipalities greater management support from the provincial administration and ensure a system of equalisation between municipalities, in order to transfer resources from richer to poorer (Article 9.5)”.

225. The issue has not been addressed by the legislator: in Spain a proper equalisation system does not exist at local level. The formula applied to the distribution of the participation of municipalities in State taxes (*participación de los municipios en los tributos del Estado*) includes (in addition to the number of inhabitants, which weights 75% of the total, and to the capacity of the local authority to collect its own resources, corresponding to 12,5%) some criteria aimed at reducing inequalities between richer and poorer municipalities, taking into account the minor fiscal capacity (*inverso de la capacidad tributaria*, corresponding to 12,5%). However, this mechanism is insufficient, especially as regard to small municipalities in the depopulated areas, where the cost of services is higher due to the low population density, as it was pointed out by the representatives of small municipalities during the monitoring activity.

226. During the consultations after the monitoring activity, the Spanish government pointed out that smaller municipalities present a very healthy financial position, producing fiscal savings (around 20% of the total of municipalities) as per the last data published (see also the Annex 2 on Gross and Net savings sent by the government). Even if particular cases can present problems of lack of resources and acknowledging that the new financing system should aim at correcting these problems and to account for specific circumstances of these local governments, the government maintains that published data do not point to a general situation of under-funding in smaller municipalities and geographically weak areas (transition, mountain or island regions).

Annex 2: Gross and Net savings. Budgetary settlement 2019

Thousands
of euros

Population groups	Current Revenue	Current Expenditure	Gross Saving	Financial Liabilities	Net Saving
>1.000.000 inhab.	7.823.805	6.081.809	1.741.997	566.459	1.175.537
500.001 to 1.000.000 inhab.	3.058.295	2.498.415	559.879	310.953	248.926
100.001 to 500.000 inhab.	10.901.325	9.148.245	1.753.080	1.327.768	425.312
50.001 to 100.000 inhab.	6.047.797	4.930.529	1.117.268	610.733	506.534
20.001 to 50.000 inhab.	8.059.011	6.625.621	1.433.389	879.966	553.423
5.001 to 20.000 inhab.	8.762.885	7.305.158	1.457.727	602.363	855.364
<= 5.000 inhab.	6.369.027	5.208.789	1.160.237	243.673	916.564
TOTAL MUNICIPALITIES	51.022.145	41.798.567	9.223.578	4.541.916	4.681.661

Source: Ministry of Finance

227. However, the rapporteurs consider that these figures cannot substitute the introduction of a proper system of equalisation between municipalities. For these reasons, the rapporteurs consider that Article 9.5 of the Charter is not fully respected in Spain.

3.8.6 Article 9.6

228. As for Article 9, paragraph 6, of the Charter, on consultation of local authorities on the way in which redistributed resources are allocated, this issue was addressed in Recommendation 336 (2013), together with the general issue of the lack of adequate consultation, that has been mentioned under Article 4.6.

229. The rapporteurs welcome the participation of the representatives of the FEMP within the newly created "*Conferencia Sectorial del Plan de Recuperación, Transformación y Resiliencia*" and encourage the enhancement of the principle of consultation in the perspective of a "second decentralisation".

230. However, at this stage, the rapporteurs consider that the requirements of Article 9.6 of the Charter are only partially respected in Spain.

3.8.7 Article 9.7

231. Article 9, paragraph 7 of the Charter establishes that "As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction". Although most of the State or regional grants are unconditional (non-earmarked), grants for specific projects do exist in Spain. Part of local investment projects are also financed through EU structural funds and other financial instruments. In addition, municipalities (especially the small ones) may also receive grants from the provinces for the accomplishment of public works or infrastructures (for instance, the paving of local streets or the construction of a new sports facility)

232. However, local authorities are completely free to exercise policy discretion within their own jurisdiction also when they use those specific grants. No issues have been raised on this topic during the monitoring activity.

233. For these reasons, the rapporteurs consider that Article 9.7 is complied with in Spain.

3.8.8 Article 9.8

234. Article 9, paragraph 8, refers to the access to the national capital market for the purpose of borrowing for capital investment. Access to national capital markets is important for local authorities to finance investment projects necessary for the further development of the local area because in many cases the amount of their own "ordinary" resources is not sufficient to cover all the projects and plans decided on by local authorities to satisfy local needs. However, like other rights enshrined in the Charter, this is not absolute and must be reconciled with the general policy on public sector spending and debt. This is why the Charter says that the access must take place "within the limits of the law". Moreover, as a result of the recent economic crisis, many countries have introduced austerity measures to deal effectively with public deficits, so access to the national capital market should be analysed in the context of national fiscal policy and the governance of public debt⁹⁰.

235. In Spain, local authorities have access to capital market⁹¹, with some limitations related to their financial situation, which can imply the authorisation of the Ministry of Finance or of the Autonomous Community (Article 53)⁹².

236. As a consequence, according to 2018 figures, 2.3% of the Municipalities cannot arrange debt operations due to exceed their debt / current income ratio by 110%, and 2.2% must have the approval of the supervisory

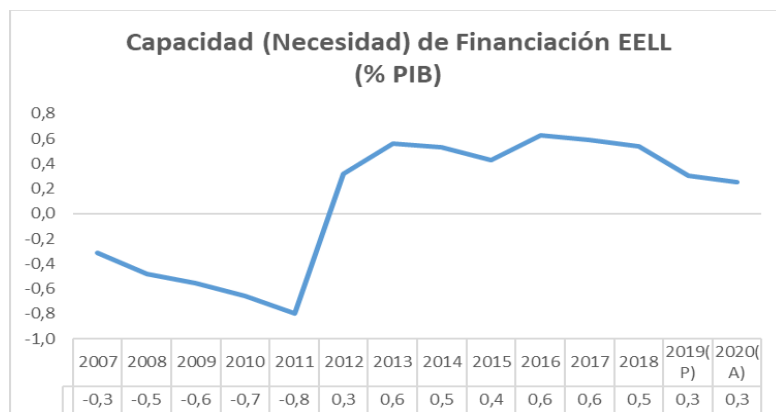
90 Contemporary Commentary, para 182-183.

91 See Articles 48-55 of the Consolidated Text of the Local Tax Regulatory Law, approved by Royal Legislative Decree n° 2/2004, of March 5.

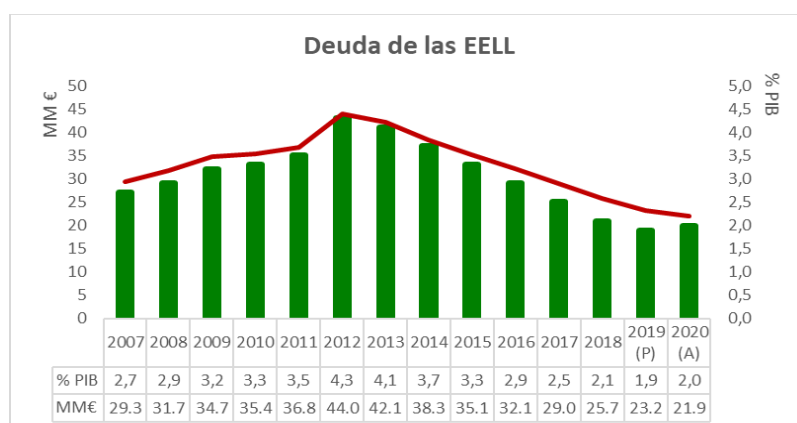
92 More limits have been established by the Organic Law n° 2/2012 of April 27th, 2012, on Budgetary Stability and Financial Sustainability. According to Article 11.4, "Local Corporations must maintain a balanced budget or a budget surplus". According to Article 13.5. "The authorisation of the State, or in its case of the Autonomous Communities, to the Local Authorities to carry out credit operations and debt issuances, in compliance with the provisions of article 53 of the Consolidated Text of the Local Tax Regulatory Law, approved by Royal Legislative Decree 2/2004, of March 5, will take into account compliance with the objectives of budgetary stability and public debt, as well as compliance with the principles and obligations arising from the application of this Law".

body when it is between 75% and 110%. On the other hand 4,403 Municipalities have no financial debt as of 31 December 2018⁹³.

237. The delegation was informed that the local government indebtedness was halved from 2012 to 2020.



Source: Ministry of Finance



Source: Ministry of Finance

238. The rapporteurs are aware of the impact of the local government debt on the public finances and of the importance of keeping a balanced budget, also taking account the European Union requirements.

239. Therefore, the rapporteurs consider that the requirements of Article 9.8 of the Charter are complied with in Spain.

3.9 Article 10 – Local authorities' right to associate

Article 10 – Local authorities' right to associate

1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

⁹³ Ministerio de Economía y Hacienda: *Haciendas locales en cifras*. 2018, p 9.

3.9.1 Article 10.1

240. Article 10 of the Charter covers the possibility of co-operation between local authorities and their right to associate, at both national and international level.

241. Article 10, paragraph 1, refers to types of cooperation aimed at carrying out tasks of common interest. Under Article 10.1, local authorities firstly have a general right to co-operate with one another in order to deliver local services or discharge their responsibilities. Inter-municipal co-operation (or co-operation at other levels of local government) is a fundamental tool for local authorities in terms of delivering services, in view of the fact that many of them are too small or too weak (financially speaking) to deliver all the services they are supposed to or to carry out any meaningful local strategy or policy. This general entitlement to co-operate with other local entities is supplemented by a more specific right, namely the right to “form consortia”, i.e. to create separate organisations. Although the Charter only mentions “consortia”, the specific right to create joint institutional structures, separate from the participating local authorities, may take various forms⁹⁴.

242. In Spain, the right of municipalities to cooperate and associate with other municipalities to establish “*mancomunidades*” is recognised by Article 44 of the LBRL, according to which “1. Municipalities are recognized the right to associate with others in associations for the joint execution of certain works and services within their competence. 2. The associations have legal personality and capacity to fulfil their specific purposes and are governed by their own Statutes. The Statutes have to regulate the territorial scope of the entity, its object and competence, governing bodies and resources, term of duration and how many other points are necessary for its operation. In any case, the governing bodies will be representative of the joint city councils”.

243. Municipalities belonging to different autonomous communities may be integrated into the same association, provided that the regulations of the affected autonomous communities allow it.

244. The division of the legislative competence between the State and the Autonomous Communities in this matter is especially complicated, and it originated several conflicts, decided by the Constitutional Court. This case-law also refers to Article 10.1 of the Charter to protect the local autonomy of the *mancomunidades*, as, “although they are not ‘consecrated constitutional local entities’, they are directly related to the interests of the joint municipalities and, with that, to the guarantee of local autonomy (art. 137 CE)”⁹⁵. For this reason, limitations to this right can only be introduced by national legislation, and always in compliance with the institutional guarantee of local autonomy: “The legislative configuration of this “right of association” is constitutionally relevant from the perspective of the guarantee of municipal autonomy (arts. 137 and 140 CE). The right to promote joint management of public services is simply an expression or development of the autonomy that municipalities have constitutionally recognized (arts. 137 and 140 CE). In this way, a regulation of this “right of association” could violate, where appropriate, not Article 22 CE, but Articles 137 and 140 CE, which are those that guarantee the municipal public power decision-making areas related to their own organisation and the management of the matters that concern them”⁹⁶.

245. Therefore, the rapporteurs believe that Article 10.1 of the Charter is fully respected in Spain.

3.9.2 Article 10.2

246. In this paragraph the Charter clearly recognises and sets out another right of local authorities: that to belong to (a) a national association for the protection and promotion of their common interests; and (b) an international association of local authorities.

247. The “associations” referred to in paragraph 2 are different from those mentioned in paragraph 1. Those mentioned in Article 10.1 are set up for the delivery of local services, plans or projects and are instruments for discharging duties and responsibilities. Conversely, those referred to in Article 10.2 are instruments for the promotion of common interests. These associations play a fundamental role in representing and defending the rights, powers and interests of local authorities and they carry out many activities on behalf of them all (not only in favour of their members)⁹⁷.

94 Contemporary Commentary, para. 187-194.

95 STC 41/2016.

96 STC 45/2017.

97 Contemporary Commentary, para 198.

248. In Spain, the normative framework for establishing associations representing local authorities is contained in the Fifth Additional Provision of Law n° 7/1985 LBRL⁹⁸, which supplement the general provisions on the right of association contained in the Article 22 of the Constitution and in the Organic Law n° 1/2002, of 22 March, regulating the Right of Association.

249. Strong associations do exist, both at State and regional level. At State level, the National Association of Municipalities and Provinces (FEMP – *Federación española de municipios y provincias*) comprises in total 7,410 entities (municipal councils, provincial councils, island councils and inter-island councils), representing more than 95% of Spanish Local Governments. It aims at encouraging and protecting the autonomy of local entities by representing and defending their interests before the two other levels of government. It was declared a Public Utility Association by Agreement of the Council of Ministers of June 26, 1985. The FEMP is the Spanish Section of the Council of Municipalities and Regions of Europe (CMRE) and the official headquarters of the Ibero-American Organisation for Inter-municipal Cooperation (OICI)⁹⁹.

250. In addition, there are associations of local authorities operating at regional level in all Autonomous communities (in some cases more than one). These regional associations can agree with the government of the Autonomous Community on the form of cooperation between the regional FEMP and the Autonomous Communities.

251. Municipalities may also belong to international associations, as part to their general right to associate.

252. The rapporteurs consider that Article 10.2 of the Charter is fully respected in Spain.

3.9.2 Article 10.3

253. Article 10, paragraph 3, addresses the cooperation of local authorities with their counterparts in other States. The right to engage in cross-border cooperation is also protected.

254. Spain has a long tradition of cross-border cooperation¹⁰⁰. It has ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106), which entered into force in Spain on 25 of November 1990. It has neither signed nor ratified the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159); Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation (ETS No. 169); Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euro-regional Co-operation Groupings (ETS No. 206).

255. Spain signed bilateral treaties on transfrontier cooperation with France and Portugal, which refer to the cooperation between transfrontier local entities. The Royal Decree n°1317/1997, of 1 August, on communication prior to the General State Administration and official publication of the agreements of cross-border cooperation of Autonomous Communities and local authorities with foreign territorial entities establishes the procedure for the signature of agreements between local authorities in the framework of the abovementioned treaties. The Royal Decree replaces the “express approval” of the State to the cross-border cooperation projects, in force so far, and replaces it by the “prior communication” procedure to the General Administration of the State of these projects. This communication must be carried out by the entities who sign the draft agreement with the Secretary of State for Administrations of the Ministry of Finance and Public Administrations, which acknowledges receipt and has one month to communicate the objections. Objections must be justified and must be based on the fact that the project does not respect the limits that result from what is established in the European Framework Convention and, where appropriate, in the bilateral Treaties. The prior communication therefore is not configured as an authorisation, but as an obligation whose fulfillment conditions the effectiveness of the agreements between the signatory entities.

98 According to this provision, “1. The Local Entities may establish associations, at a state or regional level, for the protection and promotion of their common interests, to which their specific regulations will be applied and, in matters not provided for in it, the State legislation on matters of associations”. It is also established that “4. The associations of Local Entities of state scope with greater implantation throughout the territory will hold the institutional representation of the local Administration in their relations with the General Administration of the State”.

99 <http://www.femp.es/quienes-somos>

100

https://www.mptfp.gob.es/dam/es/portal/politica-territorial/internacional/cooperacion/Coop_Transfronteriza/2013_04_Informe-web_cooperacion_transfronterizax.pdf

256. The rapporteurs consider that Article 10.3 of the Charter is fully respected in Spain.

3.10 Article 11 – Legal protection of local self-government

Article 11 – Legal protection of local self-government

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

257. Article 11 of the Charter refers to an effective judicial remedy to ensure respect for local self-government.

258. In Spain, two different legal remedies are relevant as regards Article 11 of the Charter: “ordinary protection”, which is enforced by administrative courts; and secondly, “constitutional protection” that is carried out by means of a special appeal before the Constitutional Court.

259. As for the ordinary protection, should a national or regional agency adopt a decision or an administrative regulation which could interfere with local self-government, the local authority which considers itself affected by that measure may sue the State or the Region in the administrative courts, claiming that local autonomy has been violated. These courts may set aside and even quash the contested State or regional measure, if they find that there is a clear and evident violation of local autonomy. At the top of the administrative courts system stands the Supreme Court (3rd Chamber). The case-law of this court of justice is, consequently, very important, and constitutes an unavoidable element of the legal idea of “local autonomy”. The Supreme court has directly applied the Charter in a number of cases.

260. As for the constitutional protection, the Organic Law 7/1999 of 21 April (which preamble explicitly refers to Article 11 of the Charter), introduced the conflict in defense of local autonomy¹⁰¹. Through it, local authorities may challenge laws or regulations passed by State and Autonomous Communities which adversely affects the constitutionally guaranteed local autonomy. As stated by the Constitutional Court, “This new procedure reinforces the mechanisms in defense of local autonomy that local entities already have in our system, which traditionally had established jurisdictional channels so that they could demand the protection of the free exercise of their powers, such as provides for art. 11 of the European Charter of Local Autonomy, [...]. Said defense against invasions caused by infralegal acts or regulations could, of course, be substantiated before the Judicial Power [...]. It was also possible for local entities to allege the unconstitutionality of norms with the force of law that undermined their constitutionally guaranteed autonomy, but only before the ordinary jurisdiction [...] the Law regulates a new constitutional process that enables certain local entities to go to the Constitutional Court in defense of 'constitutionally guaranteed local autonomy' (art. 75 bis.1 LOTC) against violations attributable to both the state legislator and the regional legislator. The conflict in defense of local autonomy constitutes a 'way for the specific defense of local autonomy before the Constitutional Court' [...]. Said specificity is manifested in that the conflict can only be promoted for violation of the 'constitutionally guaranteed local autonomy'; consequently, the violation of constitutional precepts that are not directly related to the autonomy that the Constitution guarantees to local authorities may not be alleged in it”¹⁰².

261. Despite this important constitutional protection, the document provided by the Constitutional Court to the Congress delegation confirmed the extremely limited use of this instrument (only 1 appeal in the years 2016-2021), especially as a consequence of the very narrow pattern to trigger the Court¹⁰³. According to the law, in the cases of laws that are not of single recipient, complaint may be lodged by a number of municipalities involving at least one-seventh of those in the territorial scope of the law or regulation having the force of law and representing at least one-sixth of the official population of the corresponding territory and a number of provinces involving at least half of those in the territorial scope of the law or rule with force of law and represent at least half the official population. In addition, to lodge the conflict in defense of local autonomy it is mandatory to reach agreement of plenary body of each local government to promote it adopted by an absolute majority of the legal number of its members.

101 Ley Orgánica n° 7/1999, de 21 de abril, de modificación de la Ley Orgánica 2/1979, de 3 de octubre, del Tribunal Constitucional.

102 STC 240/2006.

103 See L. Pomed Sánchez, *El conflicto en defensa de la autonomía local: mayoría de edad en soledad. Balance escéptico de dieciocho años de existencia del conflicto en defensa de la autonomía local*, in *Anuario de gobierno local*, 2017, 291 ss.

262. Once this agreement is reached, claimants, before lodging the conflict before the Constitutional Court, must apply, within three months from the adoption of the law or regulation having the force of law contested, for mandatory but not binding opinion to the Council of State or equivalent body of the Autonomous Community, depending on whether the territory of local authorities covers a single region or several of them. Within one month of receipt of the opinion, legitimated subjects may raise the conflict before the Constitutional Court.

263. The Constitutional Court has been developing its doctrine on local autonomy especially at the request of the Autonomous Communities: local matter can be the subject of a competency claim and the Autonomous Communities are entitled to defend local autonomy before the Court¹⁰⁴.

264. Considering the range of judicial remedies available to local authorities and the fact that no issues were raised by the interlocutors during the monitoring activity, the rapporteurs consider that Article 11 is fully respected by Spain.

4. ADDITIONAL PROTOCOL TO THE CHARTER ON THE RIGHT TO PARTICIPATE IN THE AFFAIRS OF THE LOCAL AUTHORITY

265. With regard to the right to participate in public affairs at local level in Spain, the rapporteurs note, exactly as the previous rapporteurs did in 2012, that Spain has good practices in this respect.

266. Spain recognizes to certain non-national residents the right to participate in local elections¹⁰⁵. Foreigners can vote in Spain's municipal elections if they are official residents of Spain and citizens of the European Union or citizens of a country with which Spain has a reciprocity agreement.

267. Another example of direct participation the rapporteurs would like to highlight are the consultative processes and local referendums provided by national and regional legislation and organised throughout Spain¹⁰⁶.

268. In this sense, the rapporteurs note that Spain, despite those positive examples on participation in public affairs, has not yet signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207). Moreover, nothing in the present legal scheme would prevent that signature.

269. Therefore, the rapporteurs encourage national authorities to sign and ratify the Additional Protocol in the near future.

5. OTHER MATTERS RELATED TO THE FUNCTIONING OF LOCAL AND REGIONAL SELF-GOVERNMENT: THE IMPACT OF THE COVID PANDEMIC ON SPANISH LOCAL GOVERNMENT

270. Since March 2020, the COVID-19 pandemic has determined a major crisis situation, which put the exercise of local democracy under much more constraints and pressure than during normal times. Local authorities have been at the frontline of managing this crisis, experiencing additional spending needs

104 STC 41/2016, de 3 de marzo; 180/2016, de 20 de octubre; 45/2017, de 27 de abril; 93/2017, de 6 de julio; 101/2017, de 20 de julio, y 100/2019, de 18 de julio.

105 Ley Orgánica n° 5/1985, de 19 de junio, del Régimen Electoral General, Article 176.

106 See Article 71 LBLR, according to which "In accordance with the legislation of the State and the Autonomous Community, when it has statutory competence on this issue, the mayors, prior agreement by an absolute majority of the Plenary and authorisation of the Government of the Nation, may submit to popular consultation those matters of the own municipal competence and of local interest that are of special relevance for the interests of the citizens, with the exception of those related to the local budget". See also Article 18.1, f), according to which residents have the right to ask a popular consultation within the framework established by the law. This provision has been developed by Article 70 bis of the LBRL, introduced by the Law n° 57/2003. On the popular participation at local level see J. L. Martínez-Alonso Camps *Las consultas populares municipales: consideraciones sobre el marco normativo y su identificación como referéndum*, in *Anuario del Gobierno Local*, 2010, p. 447 ff.; E. Orduña Prada, *Democracia local y participación ciudadana: nuevas perspectivas sobre consultas populares municipales*, in *Anuario del Gobierno Local*, 2017, p. 47 ff.

regarding social welfare and public health, as well as in education and public transport. At the same time, the pandemic determined significant losses of local government revenue, affecting fees and taxes ¹⁰⁷.

271. In Spain, the Royal Decree n° 463/2020, of 14 March, declared a state of alarm for the management of the health crisis situation caused by COVID-19, based on Articles 55 and 116 of the Spanish Constitution¹⁰⁸. As in most of the countries, the main measures adopted have been the limitation of mobility and other specific measures aimed at both preventing the transmission of the disease and mitigating the subsequent economic impact.

272. The declaration of the state of emergency in March 2020 has meant the automatic attribution of a single command to the Spanish Government, with the centralisation of many decision-making powers that in normal situations would fall within the competencies of Autonomous Communities and local authorities. However, each Administration, as stated in Article 6 of the first Royal-Decree, "shall retain the powers conferred on it by the legislation in force in the day-to-day management of its services to take the measures it deems necessary within the framework of direct orders from the competent authority for the purposes of the state of emergency".

273. In this framework, an important role is played by the cooperation between all tiers of government. The participation of local authorities in specific areas for emergency response was carried out through the participation of the Spanish Federation of Municipalities and Provinces (FEMP) in the sectoral conferences and other meetings of a sectoral nature that have been convened, for example in relation to health issues, waste management, citizen security, gender violence and the management of social services, among others. The meetings of the sectoral conferences, according to data published by the Government, have increased by 200% compared to those held in previous years, going from an annual average of 56 meetings to a total of 163 in 2020.

274. The president of the FEMP participated for the first time at the Conference of Presidents, as we said above. Since its creation in 2004, this conference had met regularly on 6 occasions and, due to the COVID-19 pandemic, 17 extraordinary meetings have been held only between the months of March and October 2020.

275. In addition, a constant dialogue between the government and the FEMP has been developed, since the online meeting of 20 April 2020 between the President of the Government, together with the Minister of public administration with the FEMP.

276. The FEMP has carried out informative and advisory work to local authorities during the pandemic¹⁰⁹.

277. At financial level, the crisis affected especially the Autonomous Communities, taking into account that they assume responsibility for ordinary health management in their respective territories, as well as, in general, those corresponding to social services. These circumstances have required a significant strengthening of the public resources that the Autonomous Communities allocate to cover these needs.

278. As for local authorities' finances, the delegation received contradictory information during the monitoring activity. While some interlocutors pointed out the important increase in transferred resources, especially by the State, and in some cases also from the Autonomous Communities, other interlocutors stressed the lack of financial support and the necessity for local authorities to use their own resources to answer to the immediate needs of their citizens.

279. Among the first measures, the possibility to use the 2019 surplus to finance social expenditure (social services and social promotion) should be highlighted, in accordance with article 3 of Royal Decree Law n° 8/2020 of 17 March, supplemented by article 20.1 of Royal Decree Law n° 11/2020 of 31 March.

280. Among other measures, local authorities have received, under criteria of population, resources from the Extraordinary Social Fund endowed with 300 million Euros, approved by Royal Decree Law n° 8/2020, March 17, to address situations arising from the COVID-19. These resources have been used to finance

107 CG(2021)40-07, 24 March 2021, Ensuring the respect of the European Charter of Local Self-Government in major crisis situations.

108 See European Committee on Democracy and Governance, Report on Spain, [https://www.coe.int/en/web/good-governance/cddg-and-covid#\(%2264787140%22:\[22\]\)](https://www.coe.int/en/web/good-governance/cddg-and-covid#(%2264787140%22:[22]))

109 In this regard, the following link can be consulted: <http://covid19.femp.es/>

basic social service benefits exclusively aimed at dealing with extraordinary situations arising from the COVID-19.

281. According to the information transmitted by the Ministry of Finance after the monitoring activity, overall, in 2020 local entities received € 18,736 million from the financing system, 3% more than the previous year.

282. The additional resources available to them for 2021 are summarised in:

- Management of the European funds consigned in the budgets, amounting to € 1,489 million.
- Transfer of € 1,000 million to the financing fund for local entities.
- Updating of deliveries on account of participation in State taxes, for a total of € 19,452 million, 3% more than in the previous year.
- Other items: extraordinary aid to compensate for the drop in income from public transport; loans to cancel outstanding debts with the State Tax Agency and with the General Treasury of the Social Security for € 400 million; the conversion of short-term debt into long-term operations or the refinancing of loans formalised with the Fund for Financing Payments to Suppliers.
- Other subsidies and compensations: € 21.5 million for the Autonomous Cities of Ceuta and Melilla; € 7.3 million for Campo de Gibraltar; € 2 million for those affected by military bases; and € 20 million for the pact against gender violence.

283. In September 2020, after the decision taken by the European Union to suspend the fiscal rules, the Spanish Government suspended the fiscal rules for 2020 and 2021, permitting local authorities to spend the surplus that had been generated in the past. This decision was approved by the Parliament on October 20, 2020. The suspension of the aforementioned rules will allow municipalities to use their treasury remnants to collaborate in the economic and social reconstruction in the face of the socioeconomic crisis generated by COVID-19, releasing about € 15,000 million.

6. CONCLUSIONS

284. The Spanish government system is one of the most decentralised in Europe: decentralisation is a cornerstone of the Spanish constitutional democracy, based on 1978 Constitution.

285. Spain is generally fulfilling its obligations with regard to the Charter. Municipalities are at the core of Spanish democracy. They represent an important scenario for citizens participation. The right of the citizens to participate in local affairs is fully guaranteed and it benefits of multiplex and innovative tools. Local authorities enjoy a high level of autonomy. They perform important functions, contributing, together with the central Government and the Autonomous Communities, to frame Spain as a social and democratic State.

286. As the 2013 report of the Congress already recognized, the Charter contributed to the drafting of the legal framework for local government, both at national and regional level. The rapporteurs note with satisfaction that the Charter is incorporated into Spain's national law, which enables legal interpretation by the domestic courts.

287. Local autonomy enjoys a high degree of legal protection and local authorities are enabled to directly challenge laws or regulations passed by State and Autonomous Communities which adversely affects the constitutionally guaranteed local autonomy.

288. In the complex scenario of division of competences between several levels of government, which qualifies Spain as a "quasi federal system", the rapporteurs also appreciate the regular working relationship between the Central Government and the FEMP, and the wide variety of instruments for co-operation between the regional governments and local authorities.

289. As regard Recommendation 336 (2013), rapporteurs especially appreciate that the legislation has been revised in order to establish a maximum threshold for remunerating local elected representatives in accordance with Article 7.2 of the Charter.

290. However, although in general Spain complies with the Charter, there are still some issues that must be addressed, at the point that most of the interlocutors met during the monitoring activity (including national government representatives) mentioned the necessity of a "second decentralisation". The COVID-19 pandemic, which put an important burden on sub-national authorities, highlighted even more the need to innovate some aspects of the territorial organisation.

291. There are three main areas of attention, as it was already pointed out by the Recommendation 336 (2013):

- The clarification of the allocation of competences.
- The local finances.
- The consultation and cooperation mechanisms.

292. The problem of the delimitation of competences remains unsolved and there are still cases in which the distribution of competences of the territorial administrations is not sufficiently clear and requires greater specificity. The LRSAL tried to apply the principle of “one competence, one administration”, but with the aim of reducing public expenditure, more than for clarifying the division of competences.

This situation has been aggravated by the consequences that the management of the health and economic crisis caused by the COVID-19 pandemic is having on the different public administrations. In this way, local authorities face new needs that must be met by public administrations, sometimes without being clear about who the competence is, with the consequent increase in the cost of providing many public services.

In addition, although the rapporteurs consider the rationalisation of the “improper competences” introduced by the LRSAL as a positive development, contributing to improve the financial situation of the municipalities, nevertheless, the impact on local autonomy cannot be underestimated. In the actual situation, it is almost impossible for many municipalities, especially for small municipalities, to undertake “*competencias impropias*”. At this respect, as on many other issues, an enormous difference exists between the bigger towns and the small municipalities.

293. As for finances, all the interlocutors agreed on the need to introduce corrections in the current system of local financial resources, in favour of a new regional and local financing model, which gives more certainty of the resources that each administration can count on and which takes into account the particularities of local authorities in its distribution, such as demographic factors and geographic dispersion.

The main concerns are related to the financial difficulties of some small and depopulated municipalities; to the lack of resources of some local authorities to address the needs of the residents, in terms of social services, to certain transfer of competences without adequate resources. The lack of a correct calculation of the real costs of social services is also an issue, especially in depopulated areas.

294. In addition, in Spain a proper equalisation system does not exist at local level. The formula applied to the distribution of the participation of municipalities in State taxes (*participación de los municipios en los tributos del Estado*) includes some criteria aimed at reducing inequalities between richer and poorer municipalities, taking into account the minor fiscal capacity. However, this mechanism is insufficient, especially as regard certain small municipalities in the depopulated areas, in which the cost of services is higher due to the low population density. The loss of inhabitants in rural areas and, in general, the fall in the population registered as a consequence of emigration to urban areas questions the future viability of some municipalities.

295. Finally, the consultation and cooperation between levels of government may be improved. The COVID-19 emergency pointed out the unavoidability of a continuous dialogue, pushing towards an enhancement of the consultation. Only recently the President of FEMP has been invited to attend the meetings of the Conference of Presidents, which is integrated by the national and region government. The FEMP may also attend the sectorial conferences between the State and the regions, but without the right to vote. A special mention is worthy the “*Conferencia Sectorial del Plan de Recuperación, Transformación y Resiliencia*”, a new sectorial conference created in the process of implementation of European funds from the Recovery and Resilience Mechanism. In this Conference the local authorities participate through the FEMP, with right to vote.

296. The rapporteurs appreciate the recent developments of the consultation process at national level. However, they consider necessary a move towards an institutionalisation of such mechanisms, especially in the perspective of an important local government reform.

297. In conclusion, the main elements of attention pointed out by the report are the following:

- a. the division of responsibilities between levels of government has not been clarified;
- b. the general competence clause of municipalities has been narrowed to limited matters and subjected to several restrictive conditions;

c. the participation of the FEMP to the Conference of Presidents of Autonomous Communities and to the Sectorial Conferences is not defined in law;

d. the transfer of powers to municipalities without adequate financial resources persists;

e. the difficulties of management of small municipalities and the insufficient financial equalisation procedures or equivalent measures to correct the effects of the unequal distribution of financial resources between smaller and larger municipalities have not been solved;

f. Spain has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local.

298. The central government, the representatives of the Autonomous Communities, the representatives of the local authorities, including the FEMP, all agreed on the necessity of a new "*Pacto local*" (Local Compact), which should address these issues.

299. The rapporteurs are aware that Spain is a strongly decentralised State, with a very complex territorial structure and a sophisticated system of division of competence. However, they encourage all the stakeholders to engage in a dialogue with the aim to continue improving this system, adapting it to the new challenges, with the purpose of promoting Spain's development towards an even more decentralised constitutional democracy.

APPENDIX – Programme of the Congress remote monitoring meetings with Spanish interlocutors

**MONITORING OF THE APPLICATION OF THE EUROPEAN CHARTER OF LOCAL SELF-
GOVERNMENT:
SPAIN**

**PROGRAMME FOR REMOTE MEETINGS
18 – 20 May 2021**

Congress delegation:

Rapporteurs:

Ms Bryony RUDKIN

Rapporteur on local democracy
Chamber of Local Authorities, SOC/G/PD ¹¹⁰
Councillor, Ipswich Borough Council, United Kingdom

Mr David ERAY

Rapporteur on regional democracy
Chamber of Regions, EPP/CCE ¹¹¹
Minister for the Environment, member of the government
of the Republic and Jura Canton, Switzerland

Congress secretariat:

Ms Stéphanie POIREL

Secretary to the Monitoring Committee

Expert:

Prof. Tania GROPPi

Member of the Group of Independent Experts on the
European Charter of Local Self-Government (Italy)

The working languages, for which interpretation is provided during the meetings, will be Spanish and English.

110 SOC/G/PD: Group of Socialists, Greens and Progressive Democrats.

111 EPP/CCE: European People's Party Group in the Congress.

Tuesday, 18 May 2021

**MEETING WITH MEMBERS OF THE NATIONAL DELEGATION OF SPAIN
TO THE CONGRESS**

Mr José BENLLOCH FERNANDEZ, Head of the delegation, Mayor of Villareal
**Mr Pedro PUY FRAGA, Deputy Head of the delegation, Member of the regional
Assembly of Galicia**
**Mr Gorka URTARAN AGIRRE, President of the Association of Basque
Municipalities and Mayor of Vitoria Gasteiz**
Mr José Maria GARCIA URBANO, Mayor of Estepona
Ms Ana GONZALEZ RODRIGUEZ, Mayor of Gijon
Ms Gema IGUALORTIZ, Mayor of Santander
**Ms RakeI MOLINA PEREZ, Member of the regional Assembly of Vasque
Parliament**
**Ms Josefa NAVARRETE PEREZ, Member of the regional Assembly of Castile-la-
Mancha**
Ms Angeles ARMISEN PEDREJON, President of the provincial Council of Palencia
Mr José Luis BLANCO MORENO, Mayor of Azuqueca de Henares

**Mr Carlos Daniel CASARES DIAZ, Secretary General of the Spanish Federation of
Municipalities and Provinces (FEMP)**
**Ms Mar ZABALA, Secretary General of the Association of Basque Municipalities
(EUDEL)**

MEETING WITH MEMBERS OF THE NATIONAL ASSOCIATIONS

SPANISH FEDERATION OF MUNICIPALITIES AND PROVINCES (FEMP)
Mr Carlos Daniel CASARES DIAZ, Secretary General

ASSOCIATION OF BASQUE MUNICIPALITIES (EUDEL)
Ms Mar ZABALA, Secretary General

FEDERATION OF MUNICIPALITIES OF CANARY ISLANDS (FECAM)
Mr Vicente RODRÍGUEZ LORENZO, Secretary General

FEDERATION OF MUNICIPALITIES AND PROVINCES OF GALICIA (FGMP)
Mr Eduardo DE RAMONDE RODRÍGUEZ, Secretary General

<p>FEDERATION OF MUNICIPALITIES, COMARCAS AND PROVINCES OF ARAGON Mr Martin Nicolas BATALLER, Secretary General (FAMCP)</p>
<p>FEDERATION OF MUNICIPALITIES AND PROVINCES OF CASTILLE-LA MANCHA Mr Tomás MAÑAS GONZÁLEZ, Secretary General (FEMPCLM)</p>
<p>VALENCIA FEDERATION OF MUNICIPALITIES AND PROVINCES (FVMP) Mr Vicente GIL OLMEDO, Secretary General</p>
<p>FEDERATION OF MUNICIPALITIES OF THE MURCIA REGION (FMRM) Mr Manuel PATO MELGAREJO, Secretary General</p>
<p>FEDERATION OF MUNICIPALITIES OF MADRID (FMM) Ms Cristina MORENO MORENO, Secretary General</p>
<p>FEDERATION OF MUNICIPALITIES AND PROVINCES OF EXTREMADURA Mr Miguel RUIZ MARTÍNEZ, Secretary General (FEMPEX)</p>
<p>MADRID CAPITAL CITY</p>
<p>Mr Santiago SAURA, Councillor for International affairs and cooperation Mr Ignacio MOLINA, General Director of Organisation and Legal structure Ms Sara ARANDA, General Coordinator of Districts, Transparency and Citizen participation Mr Miguel Ángel RODRÍGUEZ MATEO, General Director of Budget M. Gema PÉREZ RAMÓN, Director of the Tax Agency</p>
<p>PARLIAMENT (<i>Cortes Generales</i>)</p>
<p>Mr Miguel Carmelo DALMAU BLANCO, President of the Committee of Local Entities (Senate)</p>
<p>OMBUDSMAN</p>
<p>Mr Francisco FERNÁNDEZ MARUGÁN, First Deputy and Acting Defensor</p>

Wednesday, 19 May 2021

SPANISH FEDERATION OF MUNICIPALITIES AND PROVINCES (FEMP)

Mr Abel CABALLERO ALVAREZ, President and Mayor of Vigo

MINISTRY OF TERRITORIAL POLICY AND PUBLIC ADMINISTRATION

Ms Miryam ÁLVAREZ, General Secretary for Territorial Cooperation

Mr Gonzalo DÍAZ MILLÁN, Director General of the Regional and Local Legal Regime

Ms Pilar ATIENZA, General Deputy Director of the Legal Regime of Local Administration

MINISTRY OF FINANCE

Ms Inés OLÓNDRIZ DE MORAGAS, General Secretary for Regional and Local Funding

Mr Fernando GONZALES, Head of Cabinet

Mr Manuel LEDESMA SANCHEZ

CONSTITUTIONAL COURT

Mr Juan José GONZÁLEZ RIVAS, President

COURT OF AUDITORS (*Tribunal de Cuentas*)

Ms María José DE LA FUENTE Y DE LA CALLE, President

Mr Rafael POU BELL, Technical Director of the Presidency Department

Mr José Luis CEA CLAVER, Deputy Technical Director of the 'Local entities' Department

Mr Enrique GARCÍA MARTÍNEZ DE SALINAS, Technical Director of the 'Autonomous Regions and Autonomous Cities' Department

MUNICIPALITY OF OHANES

Ms Rafaela ORTEGA BARRANCO, Mayor

MUNICIPALITY OF VALLADOLID

Mr Óscar PUENTE SANTIAGO, Mayor of Valladolid

Mr Pedro HERRERO, Councillor for Finance, Planning and Resources

Mr Alberto BUSTOS, Councillor for Citizen Participation and Sports

Thursday, 20 May 2021

JUNTA OF GALICIA

Mr Alfonso RUEDA VALENZUELA, Vice-President of the Junta of Galicia

CASTILLA Y LEÓN (*Autonomous Community*)

Mr Héctor PALENCIA RUBIO, Director General for Local Administration

DIPUTACIÓN PROVINCIAL DE ALMERÍA

Mr Javier A. GARCIA, President

COMUNIDAD FORAL DE NAVARRA

Mr Jesús María RODRÍGUEZ GÓMEZ, Director General of Local Administration and Depopulation

INDEPENDENT EXPERT ON THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT

Mr Angel Manuel MORENO, President of the Group of Independent Experts on the European Charter of Local Self-Government