

40th SESSION

Report
CG(2021)40-07final
24 March 2021

Original: English

Ensuring the respect of the European Charter of Local Self-Government in major crisis situations

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 examines the impact of the major crisis situations, such as the COVID-19 pandemic, on the application of the Charter in Council of Europe member States. It identifies the most acute issues subnational authorities have been confronted with during the sanitary crisis that has put the exercise of local democracy under unprecedented pressure and constraints.

The report underlines that the pandemic impact has varied greatly across regions and municipalities, while the areas of public health, delivery of social services and economic activities have been most strongly affected.

It concludes that the coronavirus pandemic has aggravated the recurring issues of the Charter's implementation, repeatedly pinpointed by the Congress over the past years. They include the lack of consultation, inadequate distribution of competences and financial resources, and excessive supervision.

Therefore, the report stresses the importance of upholding the principles enshrined in the Charter and its Additional Protocol in times of major crisis to safeguard local democracy and ensure local self-government resilience and sustainability.

To this end, the Congress Monitoring Committee is called in a draft resolution to pursue its monitoring activities, remotely or by developing alternative strategies to on-site monitoring, as an exceptional and temporary measure, limited to the period of the sanitary crisis.

It is also recommended that Council of Europe member States adopt various measures to support local authorities in their efforts to tackle the pandemic, while preserving local autonomy. The governments are invited to pursue their cooperation and strengthen the political dialogue with the Congress to improve local and regional democracy through the application of the Charter.

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.

RESOLUTION 466 (2021)²

1. The Congress of Local and Regional Authorities of the Council of Europe refers, in particular, to:
 - a. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR 1950);
 - b. The Statutory Resolution CM/RES (2020)1 relating to the Congress of Local and Regional Authorities of the Council of Europe and the revised Charter appended thereto, adopted by the Committee of Ministers;
 - c. The European Charter of Local Self-Government (ETS No. 122, 1985) and its Additional Protocol on the right to participate in the affairs of a local authority (ETS No. 207, 2009);
 - d. 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;
 - e. The Information Document of the Council of Europe Secretary General “Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: A toolkit for member States” (2020);
 - f. The Venice Commission report on Respect for Democracy, Human Rights and the Rule of Law during States of Emergency (2020);
 - g. Congress Resolution 455 (2020) “Local and regional elections in major crisis situations”.
 - h. Congress Resolution 467 (2021) “Recurring issues based on assessments resulting from Congress monitoring and election observation missions (reference period 2017-2020)”
 - i. Congress Bureau decision of 12 February 2021 on the adoption of the Monitoring Committee work plan for 2021-2022.
2. The Congress considers the COVID-19 pandemic as a major crisis situation which has put the exercise of local democracy under much more constraints and pressure than in normal times. Local authorities have been at the frontline of managing this crisis. Although the pandemic effects differ across regions and municipalities, globally, it brought about significant and diverse challenges to local authorities in Council of Europe member States, in particular in the areas of public health, delivery of social services and economic activities, while accelerating, in some cases, the pre-existing trend towards centralisation.
3. The coronavirus pandemic has also aggravated the recurring issues of the Charter’s implementation which the Congress has repeatedly warned of for a long time. The sanitary crisis has put many local authorities in an even more difficult financial situation, compounded by a decline in their own revenue and rising public expenses. Often, the transfer of new crisis-related responsibilities to local level was rushed through without appropriate consultation and matching financial resources and went hand in hand with tighter administrative supervision. It is to be expected that the adoption of economic recovery packages across Europe will have a negative impact on the financial situation of local authorities in the medium and long-term perspective.
4. The Congress stresses that the pandemic revealed the need for a more effective multilateral co-operation and multi-level governance which should be pursued in compliance with the principles set out in the Charter. In the digitalisation and “on-line democracy” triggered by COVID-19 may also lie an opportunity to increase transparency and citizens’ participation in the local political process provided that all changes in this area respect basic democratic principles of equality and inclusiveness and comply with the Additional Protocol to the Charter on the right to participate in the affairs of a local authority.
5. In light of the foregoing, the Congress underlines that the implementation of the commitments and responsibilities that Council of Europe members have undertaken pursuant to the Charter and its Additional

² Debated and adopted by the Congress on 24 March 2021, 2nd sitting (see Document CG(2021)40-07final, explanatory R.memorandum), co-rapporteurs: Leendert VERBEEK, Netherlands (R, SOC/G/PD) and Robert-Csongor GRÜMAN, Romania (R, EPP/CCE).

Protocol becomes even more important in times of major crisis, such as the COVID-19 pandemic, to preserve local democracy and ensure local self-government resilience and sustainability.

6. In the light of the foregoing, the Congress:

- a.* encourages the Monitoring Committee to pursue its statutory mission of monitoring of the implementation of the European Charter of Local Self-Government in Council of Europe member States in order to ensure a high level of sustainable local democracy in accordance with the provisions of the Charter, including in times of major crisis;
- b.* asks the Monitoring Committee to carry out the monitoring of the application of the Charter remotely and develop other alternative strategies to on-site monitoring as exceptional measures necessitated by the COVID-19 sanitary crisis;
- c.* underlines, at the same time, that carrying out monitoring activities remotely and implementing any other alternative strategies to on-site monitoring must be temporary and applied only during the time of crisis. They must not become a substitute to standard on-site monitoring procedures in the frame of the Congress statutory activities.

RECOMMENDATION 453 (2021)³

1. The Congress of Local and Regional Authorities of the Council of Europe refers, in particular, to:
 - a. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR 1950);
 - b. The Statutory Resolution CM/RES (2020)1 relating to the Congress of Local and Regional Authorities of the Council of Europe and the revised Charter appended thereto, adopted by the Committee of Ministers;
 - c. The European Charter of Local Self-Government (ETS No. 122, 1985) and its Additional Protocol on the right to participate in the affairs of a local authority (ETS No. 207, 2009);
 - d. 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;
 - e. The Information Document of the Council of Europe Secretary General “Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: A toolkit for member States” (2020);
 - f. The Venice Commission report on Respect for Democracy, Human Rights and the Rule of Law during States of Emergency (2020);
 - g. Congress Recommendation 444 (2020) “Local and regional elections in major crisis situations”;
 - h. Congress Recommendation 455 (2021) “Recurring issues based on assessments resulting from Congress monitoring and election observation missions (reference period 2017-2020)”
2. The Congress considers the COVID-19 pandemic as a major crisis situation which has put the exercise of local democracy under much more constraints and pressure than in normal times. Although the pandemic effects differ across regions and municipalities, globally, it brought about significant and diverse challenges to local authorities in Council of Europe member States, in particular in the areas of public health, delivery of social services and economic activities, while accelerating, in some cases, the pre-existing trend towards centralisation.
3. The Congress acknowledges that the situations of severe crisis may, in some cases, require the introduction of uniform measures throughout a country. However, this should be enacted within the limits of the constitutional distribution of powers and in a manner that preserves the valuable role of local authorities. Therefore, crisis-related centralisation can only be temporary and may not undermine, even during the time of emergency, local autonomy which has made an important contribution to the fight against COVID-19.
4. It therefore reiterates that the principles and standards of local democracy enshrined in the European Charter of Local Self-Government ratified by all 47 Council of Europe member States shall be upheld at all times of crisis to safeguard local democracy and ensure local self-government resilience and sustainability.
5. In light of the foregoing, the Congress invites the Committee of Ministers to encourage the respective authorities of Council of Europe member States to:
 - a. consider in their crisis-management and recovery policies the differential impact of the COVID-19 pandemic on local governments by placing a particular focus on those hit hardest by the crisis. Recovery and crisis prevention plans should be (re)designed in effective consultation with local authorities. This will ensure local ownership of policies needed for their successful implementation at grassroots’ level in the common interest of all levels of government and citizens;
 - b. make sure that the short-term centralisation which was applied in some cases to speed up and simplify decision-making, is only a temporary measure, and avoid the long-term centralisation of competences and the related financial resources. The decisions on continuation or discontinuation of crisis-related centralisation should be measured against the principles of necessity, proportionality, and temporariness;

³ See footnote on page 2

c. continue to support local authorities in their efforts to tackle the public health, societal and economic challenges posed by COVID-19. This can be achieved through allocating to local authorities adequate financial resources to fulfil their new functions, refraining from excessive supervision, ensuring coordination and systematic information on national and regional measures, exchanging good and bad practices in crisis management both within and across national borders, supporting intermunicipal cooperation;

d. seek to increase local authorities' own revenues and diversify local revenue sources to make municipalities crisis-proof and make sure that the conditions of financial transfers give local authorities leeway to determine their own spending priorities;

e. promote public participation online as complementary to more traditional forms of citizens participation in local affairs while respecting the principle of equality regarding internet access;

f. pursue their cooperation and strengthen the political dialogue with the Congress to improve local and regional democracy through the application of the Charter, and make use of the Congress hub on the COVID-19 to share good practices of responses at local and regional levels in times of major crisis.

EXPLANATORY MEMORANDUM

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1. Introduction: Local Self-Government and the Charter in times of COVID-19⁴

1. The COVID-19 pandemic has forced countries worldwide and all their government levels to function in a context of uncertainty in which citizens expect politicians to take actions on the basis of highly unreliable predictions regarding these actions' consequences for public health, economic development and social cohesion of societies. If measures adopted in such difficult circumstances then fail to achieve the expected results, this often fuels public anger and, more generally, disenchantment of citizens with politics – worrying trends that the Congress has warned alerted to for years,⁵ but which have intensified by the pandemic.

2. Yet, passivity is hardly an option and COVID-19 crisis management must face the difficult trade-offs which any course of action entails. As scenarios about the further spread of the pandemic in 2021 cannot be more than approximate, the implications for interconnected areas such as society, economy, technology, environment and governance are at this point still uncertain.⁶ One of the more predictable developments seems to be a reinforcement of the pre-existing trend towards digitalisation and the use of information technology which radically changes the context of service provision and public participation.⁷

3. Another thing that we can be sure about is that COVID-19 will have an impact on the implementation of the European Charter of Local Self-Government (thereinafter, the Charter). To assess this impact appears to be particularly relevant in a context in which the influence of European rules and institutions on the management of the pandemic has sometimes been regarded as marginal. Indeed, the response to the crisis has been viewed first and foremost as an issue for the nation-states which gave rise to what has been called “coronationalism.”⁸

4. What is interesting for the scope of this report is the impact of the pandemic on governance within European nation-states, in concrete terms, the effects on local authorities in the context of other government levels. In this regard, the Council of Europe has acknowledged that a quick and efficient response by executive authorities “may call for adoption of simpler decision-making procedures and easing of some checks and balances” and “also involve, to the extent permitted by the constitution, bypassing the standard division of competences between local, regional and central authorities with reference to certain specific, limited fields, to ensure a more co-ordinated response to the crisis”. However, it also underlined that this should be based “on the understanding that full rights of local and regional authorities shall be re-established as soon as the situation allows it.”⁹ Importantly, the Council of Europe also recognised, half a year later, “that the current crisis has also clearly revealed the need for more effective multilateral co-operation and multi-level governance.”¹⁰

5. When it comes to multi-level governance regarding COVID-19 and the place of local authorities within it, two reference points should be pointed out in this introduction. First, while it may sometimes be opportune in a situation of severe crisis to introduce uniform measures throughout a country, it is important that this happens within the limits of the constitutional distribution of powers and in a manner that preserves the valuable role of local authorities. In other words, crisis-related centralisation must be temporary, as pointed out by the Council of Europe in the above statement, and it must not suffocate, even during the time of emergency, local initiative and autonomy which has demonstrably made important contributions to the fight against COVID-19. In some cases, such initiatives have been collective efforts like Local Governments for Sustainability (ICLEI) organising an online market engagement e-pitching event to connect public and private procurers from the health sector providing medical supply.¹¹ In other instances, the creativity of *single* local

4 Report drafted by Dr. Karl Kössler, Senior Researcher at Eurac Research (Bolzano/Bozen, Italy) and Scientific Coordinator of the EU-Horizon 2020 project “Local Government and the Changing Urban-Rural Interplay (LoGov)” which involves 18 partners, among them Eurac Research and the Congress. This project has received funding from the European Union’s Horizon 2020 research and innovation programme under Marie Skłodowska-Curie grant agreement No 823961.

5 See, for example, the distressing testimonies from local representatives about increasing threats against them during the Thematic Debate “Mayors under Pressure” at the 36th Session of the Congress of Local and Regional Authorities on 3 April 2019.

6 OECD (2020), Strategic foresight for the COVID-19 crisis and beyond: Using futures thinking to design better public policies, OECD Publishing, 10 June 2020, <http://www.oecd.org/coronavirus/policy-responses/strategic-foresight-for-the-covid-19-crisis-and-beyond-using-futures-thinking-to-design-better-public-policies-c3448fa5/>.

7 See sections 2.1 and 2.5 below.

8 G Bouckaert et al, ‘European Coronationalism? A Hot Spot Governing a Pandemic Crisis’ (2020) 80(4) *Public Administration Review*.

9 Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: A toolkit for member states, 7 April 2020, <https://rm.coe.int/sq-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>.

10 Council of Europe Committee of Ministers, The Athens Declaration by the Committee of Ministers Chairmanship on “Effectively responding to a public health crisis in full respect for human rights, democracy and the rule of law”, 4 November 2020, para 12.

11 <https://iclei-europe.org/calendar/?c=search&uid=1jZRGA6>.

governments has made important contributions. These have been well-documented for both cities¹² and smaller municipalities on the countryside.¹³

6. Secondly, any assessment of the pandemic's impact on local self-government must start from the insight that local authorities are affected very differently, for example, with urban municipalities being typically hit harder than rural ones. At the same time, however, urban areas also have certain advantages. For instance, they usually have a clearly higher share of jobs that can be performed remotely.¹⁴ It is an obvious truth that all municipalities have been and will be at the frontline of managing both the acute emergency and the recovery, but this should not draw the curtain over the decidedly territorial dimension of COVID-19's impact. Data shows that this impact has been markedly different not only from country to country but also across regions and municipalities. Cases in point are Lombardy within Italy, Île-de-France and Grand Est within France, as well as Moscow within the Russian Federation. Also in Southeast Europe, larger urban municipalities with more than 100,000 inhabitants, have been more affected as a result of the higher concentration of people and economic activity.¹⁵ At the same time, even within single cities some areas, typically more deprived areas, have been hit harder.¹⁶ While COVID-19 has sometimes been called "the great equalizer" that does not discriminate, this myth needs to be debunked. The pandemic has aggravated pre-existing inequalities between groups of society and territories regarding both access to healthcare and prosperity.¹⁷ This is felt in particular at the local level with authorities being normally in charge of basic healthcare and social services. In view of the differential territorial impact, it is key that responses to the pandemic are differentiated too.

7. Against this backdrop, this report aims at taking stock of experiences of the management of COVID-19 by European local authorities, identifying the main issues and challenges related to the implementation of the Charter and making recommendations to national, regional and local authorities to comply with their legal obligations even in these difficult times of severe crisis.

8. For that purpose, the report first analyses how local governments have managed the pandemic in five thematic areas of the Charter which have been particularly affected (section 2). The first of these is the scope of self-government, which is inherently linked, however, with other Charter areas, i.e. the degree and intensity of administrative supervision and the adequacy of financial resources. Consultation of local authorities is key regarding both these financial resources and more generally. Finally, the fifth area particularly impacted by COVID-19 seems to be the right to participate in the affairs of a local authority, as enshrined in the Additional Protocol to the Charter. This right opens up another dimension, since it includes – beyond local authorities – the people and such issues as transparency and public involvement which are key in times of crisis. The report then goes on to revisit recurring issues that have proved problematic for the implementation of the Charter in order to find out to what extent the pandemic has entailed changes in this regard (section 3). Thereafter, concrete recommendations to national, regional and local authorities are presented on how to ensure compliance with the Charter in times of crisis (section 4).

12 <https://covidnews.eurocities.eu/>.

13 https://enrd.ec.europa.eu/rural-responses-covid-19-crisis_en.

14 OECD, Capacity to remote working can affect lockdown costs differently across places, 2 June 2020, https://read.oecd-ilibrary.org/view/?ref=134_134296-u9iq2m67ag&title=Capacity-for-remote-working-can-affect-lockdown-costs-differently-across-places.

15 NALAS et al, Survey: South-East European Local Governments in Post Covid-19 Socio-Economic Recovery, 16 September 2020, http://www.nalas.eu/News/Survey_Covid19, 82.

16 OECD, The territorial impact of COVID-19: Managing the crisis across levels of government, 10 November 2020, https://read.oecd-ilibrary.org/view/?ref=128_128287-5agkkojaaa&title=The-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government, 2 and 5.

17 F Zakaria, A pandemic should be the great equalizer. This one had the opposite effect, Washington Post, 16 October 2020, https://www.washingtonpost.com/opinions/a-pandemic-should-be-the-great-equalizer-this-one-had-the-opposite-effect/2020/10/15/ca5af870-0f20-11eb-8074-0e943a91bf08_story.html.

2. Impact of COVID-19 on the Implementation of the Charter: Five Thematic Areas Particularly Affected

2.1 Scope of Local Self-Government

9. The degree of autonomy of local communities is the touchstone of a true democracy.¹⁸ This brief statement from the 1981 Explanatory Report to the Draft Charter (the “Harmegnies Report”) well illustrates the intrinsic link of local self-government with democracy and both are certainly more threatened in a situation of crisis than in normal times. This is because conventional wisdom has it that such situations typically lead to a concentration of power (both vertically and horizontally) in the national executive due to its presumed ability to respond more speedily and decisively.

10. To be sure, this traditional view of a practically inevitable centralisation has recently been disputed by a study analysing COVID-19 responses which claims that such a trend is only typical of national security crises and not of the current pandemic with national executives having to rely heavily on dispersed local information.¹⁹ Yet, for many countries it is beyond doubt that the pandemic has brought about a (frequently pre-existing) trend of centralisation. Interestingly, this -was, in most instances, realised through ordinary legislation rather than constitutional emergency powers.²⁰

11. Given the general picture of (vertical and horizontal) centralisation, it is key for our purposes to explore, more specifically, to what extent the pandemic has entailed a reduction of local authorities’ scope of self-government. Taking the Charter as a basis, 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” (Article 3(1)) and the definition of this “substantial share” is based on Article 4. Importantly, this provision does not uniformly and exhaustively list concrete responsibilities. Instead, the framers of the Charter deliberately rejected, according to the Explanatory Report, the notion of inherently “local” affairs in favour of a more flexible approach that ensures adaptability to very different realities of countries all over Europe. The provision, therefore, limits itself to providing guiding principles for the allocation of local powers, i.e. subsidiarity (Article 4(3)), general competence of local authorities (Article 4(2)), as well as the principle of normally full and exclusive powers (Article 4(4)).

12. For the scope of local self-government during the particular situation of a pandemic this flexible principle-based approach also means openness to acquiring new functions. And indeed, Europe’s local authorities have not only lost certain functions due to crisis-related centralisation. In some regards, their scope of self-government has actually increased. Whether these additional functions could be carried out without undue administrative supervision and with adequate funding, is of course an entirely different matter.²¹ Broadly speaking, policy areas responding to three challenges resulting from the pandemic, i.e. the public health, societal and economic challenges, seem to have been most relevant.

13. However, before we start to take stock of new responsibilities regarding these three areas it is important not to lose sight of the traditional functions that local authorities have had to carry out too. In fact, ensuring the continuity of basic public services like basic administration, waste management and public transport has been anything but easy in the context of a pandemic. Essential services had to be provided without putting municipality staff at risk and in some cases an abrupt switch was needed to online services.

2.1.1 Public health challenges

14. As for the public health challenges that COVID-19 entails, local authorities have been confronted throughout the pandemic with the difficulties of implementing and enforcing regulations stemming from the central and, in some cases, regional governments. Increasingly, however, they have also been empowered to adopt own regulations to prevent and combat the spread of the disease. Belgium is a case in point where

18 Congress of Local and Regional Authorities, Explanatory Report to the Draft Charter (so-called Harmegnies Report), CPL (16) 6, 21 September 1981. This report on a possible European Charter of Local Self-Government was drafted by Lucien Harmegnies, a former Belgian Minister of the Interior, as rapporteur of the Standing Conference of Local and Regional Authorities.

19 T Ginsburg and M Versteeg, ‘The Bound Executive: Emergency Powers During the Pandemic’ (2020) *University of Chicago Public Law Working Paper No. 747*.

20 F Palermo, ‘Is there a space for federalism in times of emergency?’ (2020) *Verfassungsblog*, <https://verfassungsblog.de/is-there-a-space-for-federalism-in-times-of-emergency/>.

21 See section 2.3 below.

an initial centralising impulse was followed by a Ministerial Decree of 24 July 2020 that allowed mayors and provincial governors to take complementary and additional measures. Beyond this *possibility* the central government even introduced during the second outbreak the *obligation* for local authorities to determine themselves in which parts of their territory face masks shall be mandatory. As a result, local governments, until then mere implementers of policies of higher government level, haven taken centre stage.

15. The powers of local authorities to issue complementary regulations (even if mostly only stricter ones) has also been a trend in other countries, ranging from Hungary to Norway. In some of them there are, however, differences between types of municipalities. In Germany, the federal Infection Protection Act of 2000 empowers both the *Länder* and local authorities to take action to prevent and fight infectious diseases. But since among the latter this competence was granted to the second-level authorities, i.e. the county authorities (*Kreisverwaltungsbehörden*) and not to the municipalities, there are differences between the “county-free cities” (*kreisfreie Städte*) and other municipalities, typically rural and smaller ones. Only these special cities exist, as their name suggests, outside of the framework of counties and in fact assume county responsibilities, among them those regarding COVID-19. Therefore, it was in the case of the first curfew in Germany not for the small Bavarian municipality of Mitterteich to make the decision but for the county of Tirschenreuth which it belongs to.

16. In terms of public health challenges for local authorities, it is important to bear in mind that these have not only concerned the fight against the pandemic itself but also the latter’s adverse knock-on effects on access to other medical treatment more generally. Thus, directly COVID-19-related measures like drive-in testing stations in Vienna, the construction of a new hospital only for COVID-19 patients in Berlin or medical assistance via video calls to infected people with lesser symptoms in many European cities²² have only been one part of local governments actions concerning public health. The other part has been in many countries a sudden switch for at least some general medical support to digital healthcare. In a country like Sweden the county councils have already operated since 2016 a programme that enables patients to make video calls with their physician via a smartphone app.²³ But for most countries this has been completely uncharted territory.

17. It is important to note that the extent to which local authorities have had to deal with public health challenges varies greatly across Europe. This is not only because some of them have been more proactive in assuming new responsibilities than others or have had to accept a downloading of central government functions, but also because of great differences regarding the constitutional distribution of powers concerning public health. Even countries from a similar part of the continent like Finland and Iceland diverge considerably in this respect. In the Finnish case, municipalities and their associations have major responsibilities regarding healthcare, including large university hospitals. By contrast, in Iceland not only hospital care but healthcare at large is a competence of the central government with the municipalities being largely concentrated on social welfare, infrastructure and schooling. This does not mean of course that Icelandic local authorities have not had a role to play concerning the management of the pandemic. As their counterparts in other countries, they have been faced with other tasks, i.e. that of coping with the societal and economic challenges of COVID-19.

2.1.2 Societal challenges

18. Some of the most urgent tasks for local authorities have been, especially during a lockdown, the active outreach to vulnerable groups like elderly people, homeless persons and migrants, measures against growing domestic violence, the shift towards digital education and the adaptation of social welfare support.

19. As for the outreach to vulnerable groups, the Belgian City of Bruges has launched, for instance, a “chat buddies” initiative to tackle the problem of loneliness in times of COVID-19.²⁴ Employees of the Public Centre for Social Welfare have called persons aged over 85 to offer them a chat buddy, i.e. a volunteer who regularly calls or writes to them. Actions have also been started in municipalities to organise home delivery of groceries and medicine (e.g. Bologna in Italy) or to provide other practical help to elderly people in precarious

²² Eurocities, Overview of social measures in cities to respond to COVID-19 crisis, 1 July 2020, https://eurocities.eu/wp-content/uploads/2020/08/Overview_of_social_measures_in_cities_to_respond_to_COVID-19_updated_1_July.pdf, 4.

²³ M Blix and J Jeansson, ‘Telemedicine and the Welfare State: The Swedish Experience’, (2018) *IFN Working Paper No. 1238*.

²⁴ <http://www.kenniscentrumvlaamsesteden.be/Paginas/HT5.aspx>.

situations (e.g. Nice in France).²⁵ In Spain, the Network of Cities and Communities Friendly to the Elderly, promoted worldwide by the WHO, has been credited with facilitating an exchange of good practices between municipalities.²⁶

20. A second main societal challenge for local authorities is domestic violence which has become virulent especially under lockdown conditions. Municipalities across Europe have responded differently but forcefully. Some have launched awareness campaigns and active calls on neighbours to report their observations (e.g. Zaragoza in Spain, Bristol in the United Kingdom), while others have enlarged their accommodation facilities for victims of violence (e.g. Düsseldorf in Germany, Istanbul in Turkey).²⁷

21. Thirdly, with municipalities typically playing a key role regarding education they have had to deal with a number of pandemic-related challenges in this area. They had to equip schools for presence learning under conditions of social distancing and address the educational inequalities that distance learning often entails. Some local authorities have provided lower-income families with digital devices (e.g. The Hague in the Netherlands, Gdańsk in Poland), while others provided digital learning platforms (e.g. Tirana in Albania, Bamberg in Germany). In the latter regard, an online education project in Moldova seems particularly noteworthy, not least because of the broad front of actors launching and implementing it, including the City of Chisinau, the Ministry of Education, various foundations, universities and the National Association of ICT Companies. Several thousand lessons have been filmed and made accessible online in both Romanian and Russian, as well as on television.²⁸ On a broader scale, the worldwide Coalition of Cities for Digital Rights has shared and promoted recommendations on how to make use of technology in response to the pandemic emphasizing inclusive access to it. Such initiatives of single municipalities or groups of them may help to counter the digital divide that still exists, socially, among groups within one and the same municipality and between urban and, territorially, between urban and rural municipalities.²⁹

22. Finally, municipalities needed to adapt social welfare support to the reality of the pandemic. While the City of Madrid, for example, hired additional staff to strengthen social services, Vienna made it possible for people to extend social benefits from home by waiving the requirement of appearing in person at municipal offices. Moreover, as more and more people have become unable to pay their rent, Vienna has been one among several European cities to stop evictions of tenants in municipal housing which amounts to as many as 220,000 flats with half a million people.³⁰ In London, an innovative project targeted the problem of feeding vulnerable residents in the context of COVID-19. The Strategic Coordination Group, the body in charge of the city's response to the pandemic, teamed up with all 32 boroughs and the three largest food redistribution charities to efficiently stock food hubs across London.³¹

2.1.3 Economic challenges

23. A third set of additional tasks that COVID-19 entailed for Europe's local authorities is to support the economy, both to mitigate its downturn in the short run and to facilitate its recovery in the long run. A widespread measure has been to provide financial aid to local businesses. Some municipalities made nearly all kinds of businesses eligible, others put the focus especially on SMEs in the hospitality, events and tourism sectors (e.g. Edinburgh, Budapest)³² and still others emphasized support for the cultural sector (e.g. Vilnius' Plan 4x3)³³. Among the actions of the City of Vienna has been the establishment of the company "*Stolz auf Wien*" ("Proud of Vienna") which invests up to one million EUR in Viennese businesses which the pandemic has left in need of short-term funding. Being a public private partnership, the capital of this company is

25 Eurocities, Overview of social measures in cities to respond to COVID-19 crisis, 1 July 2020, https://eurocities.eu/wp-content/uploads/2020/08/Overview_of_social_measures_in_cities_to_respond_to_COVID-19_updated_1_July.pdf, 2.

26 www.ciudadesamigables.imserso.es/InterPresent1/groups/imserso/documents/binario/newsletter_n33_2020.pdf.

27 Eurocities, Overview of social measures in cities to respond to COVID-19 crisis, 1 July 2020, https://eurocities.eu/wp-content/uploads/2020/08/Overview_of_social_measures_in_cities_to_respond_to_COVID-19_updated_1_July.pdf, 4-5.

28 European Committee on Democracy and Governance and COVID-19, Republic of Moldova, [https://www.coe.int/en/web/good-governance/cddg-and-covid#{%2264787140%22:\[14\]}](https://www.coe.int/en/web/good-governance/cddg-and-covid#{%2264787140%22:[14]}).

29 https://citiesfordigitalrights.org/sites/default/files/CC4DR_Recommendations%2BPosition%20Statement_Covid19tech%20final.pdf.

30 Eurocities, Overview of social measures in cities to respond to COVID-19 crisis, 1 July 2020, https://eurocities.eu/wp-content/uploads/2020/08/Overview_of_social_measures_in_cities_to_respond_to_COVID-19_updated_1_July.pdf, 6.

31 European Committee on Democracy and Governance and COVID-19, United Kingdom, [https://www.coe.int/en/web/good-governance/cddg-and-covid#{%2264787140%22:\[23\]}](https://www.coe.int/en/web/good-governance/cddg-and-covid#{%2264787140%22:[23]}).

32 Eurocities, Preliminary overview of city measures to mitigate the socio-economic impact of COVID-19, 1 July 2020, http://nws.eurocities.eu/MediaShell/media/Overview_of_city_measures_to_mitigate_the_socio-economic_impact_of_COVID-19_updated_1_July.pdf, 1-2.

33 <https://vilnius.lt/en/2020/05/05/its-official-vilnius-introduced-its-plan-for-combating-after-effects-of-the-pandemic/>.

provided by the City of Vienna, the Vienna Chamber of Commerce and Industry and by Austrian banks.³⁴ Other measures to financially assist local companies have been guarantees for loans. For this purpose, Berlin's guarantee bank, for example, doubled its support for businesses.

24. Next to these measures providing support on the income side, municipalities have also taken steps to reduce the expenditures of local companies. One key action has been to suspend, defer or exempt rent payments of commercial tenants using municipal properties. Another measure has been the suspension, deferment or reduction of taxes and fees, sometimes on the condition that businesses demonstrate being in financial troubles due to the pandemic (e.g. Stuttgart) or that they maintain their employees (e.g. Madrid).³⁵

25. A third set of actions aimed at stimulating local economic activities. Some municipalities have invested considerably in the refurbishment of social housing (e.g. Lille) which is, among other things, intended to support local companies in the construction sector, while others have created (online) platforms making it easier for local merchants complying with COVID-19 safety rules to sell their products (e.g. Nice).³⁶ In certain cases, local authorities have combined business support with harnessing the innovation capacity of start-ups and SMEs in order to combat the pandemic. Madrid and Antwerp, for instance, launched calls for such companies to develop (digital) solutions for key problems during and after the COVID-19 crisis.³⁷

2.1.4 Local authorities at the centre of managing COVID: Between centralisation and decentralisation

26. The above examples of actions by Europe's local authorities to address pandemic-related public health, social and economic challenges illustrate how much they have been at the frontline of managing this crisis. It is important to underline that municipalities have only assumed some of their new functions in times of COVID-19 voluntarily, whereas others have been imposed by higher government levels. In the latter case, decentralisation obviously does not serve to strengthen local authorities but actually the central government "by off-loading the less gratifying functions and externalising difficult tasks".³⁸

27. While some of their functions of local governments have fallen victim to centralisation, municipalities have performed other new functions. This has mostly been based on the following rationale. On the one hand, a crisis situation requires in certain areas swift decision-making so that intergovernmental negotiations are often regarded by (central government) policymakers and often also by technical experts – particularly influential concerning the pandemic – as too cumbersome. On the other hand local action often works better than uniform national action in times of emergency in which the populace tends to be particularly sceptical about any political measures, even more so about those imposed "from above": "When civil society takes ownership, it acts much faster and much more effectively than at national level."³⁹

28. This inherent tension between centralization and decentralization during emergencies often is not solved once and for all, as crisis management may in fact oscillate over time between these two poles. That centralization must not be a one-way street regarding COVID-19 is demonstrated by the Netherlands which first witnessed a transfer of local functions to the central government and then a shift back to the local authorities.⁴⁰

29. For local authorities to be able to cope with their new functions in the wake of the pandemic three points appear to be crucial. First, these authorities need to get instant and systematic information on the COVID-19

34 <https://www.wien.gv.at/english/politics/international/pdf/covid19-measures-city-administration.pdf>.

35 Eurocities, Preliminary overview of city measures to mitigate the socio-economic impact of COVID-19, 1 July 2020, http://nws.eurocities.eu/MediaShell/media/Overview_of_city_measures_to_mitigate_the_socio-economic_impact_of_COVID-19_updated_1_July.pdf, 4.

36 <http://www.nice.fr/fr/actualites/label-sanitaire-nice?type=articles>.

37 Eurocities, Preliminary overview of city measures to mitigate the socio-economic impact of COVID-19, 1 July 2020, http://nws.eurocities.eu/MediaShell/media/Overview_of_city_measures_to_mitigate_the_socio-economic_impact_of_COVID-19_updated_1_July.pdf, 8.

38 M Keating, 'Europeanism and Regionalism' in B Jones and M Keating (eds.), *The European Union and the Regions* (Oxford, Oxford University Press, 1995) 10.

39 Andrew Dawson (UK, ECR) at a meeting of the Governance Committee of the Congress of Local and Regional Authorities, 15 September 2020, <https://www.coe.int/en/web/congress/-/recentralisation-is-not-a-miracle-cure-for-the-covid-pandemic-congress-expert-says>.

40 Jakob Wiene (Netherlands, EPP/CCE) at the meeting of the Governance Committee of the Congress of Local and Regional Authorities, 15 September 2020, <https://www.coe.int/en/web/congress/-/recentralisation-is-not-a-miracle-cure-for-the-covid-pandemic-congress-expert-says>.

measures of other governments so that they can know how to fit in into the overall crisis response. In Hungary, for example, the Ministry of the Interior operates a multi-channel information system to support the work of local governments with regular newsletters being published on the government portal and being also distributed directly to mayors and clerks of municipalities.⁴¹ Yet, it has been commonplace in many European countries that local authorities have learned about measures of other governments exclusively or at first via the media rather than through intergovernmental communication.

30. The latter is also key for a second crucial point which is the exchange of both good and bad practices. Thus, municipalities may avoid making the same mistakes and, instead, emulate measures that have already been proven to work. In the case of the Russian Federation, for instance, the City of Moscow was first affected by the pandemic and therefore later shared valuable experiences within what has been called “paradiplomacy of cities and regions”.⁴² This horizontal exchange of practices is crucial both within and across national borders and should be supported by national and international local government associations among their activities protected under Article 10 of the Charter. In fact, the Congress and other organisations have already started early on during the pandemic to provide platforms for exchange from which local authorities should attempt to draw maximum benefit.⁴³

31. Thirdly, the new local responsibilities assumed through COVID-19 can be carried out even more effectively if there is not only a horizontal exchange of information but also horizontal cooperation. Quite understandably, this is easier to achieve if there are pre-existing structures of inter-municipal cooperation to rely on. A good example is *Neteland*, a partnership for years between five municipalities in the Province of Antwerp, which provided a useful framework for collaboration regarding the management of the pandemic. The municipalities joined forces, for example, concerning the administrative support for a local hospital, the establishment of a call centre to support general practitioners, for transports, as well as logistics such as the production and distribution of face masks.⁴⁴

2.2 Administrative supervision

32. Whatever the scope of local self-government, any functions of municipalities are devalued if their exercise is subject to excessive administrative supervision. This holds true for new pandemic-related functions as much as for others. The Contemporary Comment of the Congress on the Charter therefore rightly characterises Article 8 as one of the most relevant provisions “since supervision is the very opposite of autonomy ... The greater the supervisory powers of the higher levels of government are, the smaller the actual scope of local self-government will be.”⁴⁵ This reasoning echoes a well-known academic definition, according to which real power of initiative and immunity are the two cornerstones of local self-government.⁴⁶ While initiative is thereby taken to mean the power to carry out tasks in line with local interests, immunity is the power to act (as much as possible) without supervision.

33. On the other hand, a certain degree of supervision is not disputed in European local government systems. According to the German Constitutional Court, supervision is even the “correlative of the right to self-government”⁴⁷ of municipalities and thus illustrates the more limited nature their autonomy compared to that of the *Länder*.

34. The actual degree of supervision is then influenced by a number of factors, including the stability and administrative capacity of local governments, their relative size and strength vis-à-vis regional governments, as well as a country’s legal and political traditions. Diverse legacies are sometimes even felt within one and

41 European Committee on Democracy and Governance and COVID-19, Hungary, [https://www.coe.int/en/web/good-governance/cddg-and-covid#{%2264787140%22:9\]](https://www.coe.int/en/web/good-governance/cddg-and-covid#{%2264787140%22:9]).

42 Youth delegate Vadim Kuznetsov (Russian Federation) at a meeting of the Governance Committee of the Congress of Local and Regional Authorities, 15 September 2020, <https://www.coe.int/en/web/congress/-/recentralisation-is-not-a-miracle-cure-for-the-covid-pandemic-congress-expert-says>.

43 <https://covid-congress-hub.org/en/>, <https://www.coe.int/en/web/good-governance/cddg-and-covid>, <https://covidnews.euocities.eu/>, https://enrd.ec.europa.eu/rural-responses-covid-19-crisis_en.

44 European Committee on Democracy and Governance and COVID-19, Belgium (Flemish Region), [https://www.coe.int/en/web/good-governance/cddg-and-covid#{%2264787140%22:11\]](https://www.coe.int/en/web/good-governance/cddg-and-covid#{%2264787140%22:11]); <https://nete.land/>.

45 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 126.

46 GL Clark, ‘A theory of local autonomy’ (1984) 74 *Annals of the Association of American Geographers*, 195-208.

47 BVerfGE 26, 228.

the same country with oversight in Switzerland's German-speaking cantons being, for instance, less rigorous than in French-speaking ones.⁴⁸

35. Differences between European countries and sometimes within them have also become evident regarding the management of the pandemic. In Italy, the controversy regarding an ordinance issued in April 2020 by the Sicilian City of Messina attracted much attention because it imposed restrictions on the access to the harbour connecting the island to mainland Italy. The local authorities had decided to take a strict approach with any boat being required to register online 48 hours before departure and to wait the municipality's authorisation to enter the harbour. With a view to strategic position of the port city the central government challenged the ordinance and nullified it for the sake of unity based on its power under Article 138 of the Legislative Decree 267/2000 ("Consolidated Text of the Laws on the Organisation of Local Authorities").⁴⁹ Within its jurisdiction concerning all acts of administrative authorities the Council of State eventually joined the position of the central government and declared the ordinance unlawful.

36. In comparison, the management of the pandemic by Norwegian local authorities has been more subject to rather comprehensive supervision. This is due to the central directive role of the Norwegian Directorate of Health, an executive agency and professional authority under the Ministry of Health. This body has the power to determine that municipalities carry out specific actions and observe specific guidelines for the implementation of national measures. During COVID-19 the Directorate has made considerable use of this authority.⁵⁰

37. When assessing the extent of administrative supervision, it is important to emphasise that such kind of oversight is not only, as mentioned above, the opposite of autonomy but also of intergovernmental cooperation. Indeed, the relations of local authorities with the central government and, if they exist, regional governments may be characterised by a prevalence of either tutelage of them as subordinate units or cooperation among partners on a more or less equal footing.⁵¹

38. Therefore, it is key to bear in mind that the joint crisis management has not only given rise to tighter supervision but also to enhanced cooperation. The fact that the experience of intergovernmental relations during the pandemic has also been one of cooperation and that this is even more imperative in the future has recently been emphasised in a "Decalogue for the post COVID-19 era" published by United Cities and Local Governments (UCLG): "[The only way forward is via co-creation, with our communities and local actors – including the private sector – and with full collaboration between different spheres of government."⁵²

39. Concrete examples of how European local authorities have cooperated with other government levels concern both the management of the acute public health crisis and efforts towards recovery. In the latter regard, the Flemish Region in Belgium has, for instance, supported municipalities with a guide on local governments as engines of post-corona recovery. This guide provides suggestions for the drawing up of local recovery plans, including support on the use of digital instruments in the post-pandemic period.

40. But even at the height of the acute crisis, when tight supervision has been most appealing for central governments, cooperation has not been absent, and it has been channelled in many cases through national associations of local governments. In Bulgaria, for example, the central government has worked with the National Association of Municipalities regarding the distribution of protective equipment, disinfectants, etc. especially to small and rural municipalities.

2.3 Financial resources

41. The Charter is very clear about the need for local self-government to be realised not only in legal terms but also in practical terms. It thus perceives inadequate financial resources and, often linked with that, administrative capacities as major obstacles on the path towards such realisation in actual practice. In line

48 A Ladner, 'Swiss Confederation' in N Steytler (ed), *Local Government and Metropolitan Regions in Federal Systems* (Montreal, McGill-Queens University Press, 2009) 347-48.

49 M Amitrano Zingale, 'Brevi riflessioni sul fondamento costituzionale del potere di annullamento straordinario degli atti degli enti locali a margine del parere del Consiglio di Stato' (2020) 735 *Diritti regionali*, 224-236.

50 European Committee on Democracy and Governance and COVID-19, Norway, [https://www.coe.int/en/web/good-governance/cddg-and-covid#\(%2264787140%22:\[16\]\)](https://www.coe.int/en/web/good-governance/cddg-and-covid#(%2264787140%22:[16])).

51 F Palermo and K Kössler, *Comparative Federalism: Constitutional Arrangements and Case Law* (Oxford, Hart Publishing, 2017) 297.

52 United Cities and Local Governments, *Decalogue for the post COVID-19 era*, 21 April 2020, https://www.uclg.org/sites/default/files/decatalogue_for_the_post_covid-19_era.pdf, 3.

with this ambition to ensure effective local self-government, the Explanatory Report indeed declares that “[the legal authority to perform certain functions is meaningless if local authorities are deprived of the financial resources to carry them out.” A report of the Venice Commission in the context of the COVID-19 crisis made a similar statement by pointing out that relevant “is not simply the formal legal division of power but the question of the practical control over resources.”⁵³ The Venice Commission thereby echoes Article 9(1) of the Charter stating that “local authorities shall be entitled, within national economic policy, to adequate financial resources of their own” and Article 9(2), as “[local authorities’ financial resources shall be commensurate with the responsibilities”].

42. When assessing whether financial resources of local authorities have not been adequate in the wake of COVID-19, it must again be kept in mind that the pandemic’s impact has not been the same for all local governments. Evidently, the reduced mobility has hit places depending on the service sector and tourism in particular much more than others.⁵⁴ Also port cities have demonstrably suffered disproportionately due to the decline of maritime transport, cruise activities, City tourism, in general, broke down due to COVID-19, winter tourism has been considerably affected etc. and places reliant on city or winter tourism have also been particularly affected. Moreover, municipalities subject to localised lockdowns like Aberdeen in Scotland or Barcelona in Spain have obviously faced more losses than other local governments.

43. A recent publication of the OECD has highlighted the important fact that the pandemic has entailed adverse effects at two levels, i.e. on “stocks” (assets and liabilities) and on “flows” (expenditure, and revenues).⁵⁵ Lower value of physical and financial assets of course sooner or later also entails lower revenues. Decreased prices for certain raw materials as much reduce local revenue as lost dividends from local public companies.⁵⁶ As for the relationship between expenditures and revenues, an increase of the former and decrease of the latter have for many local authorities entailed a double negative effect.

2.3.1 Increased expenditure

44. That the above-mentioned pandemic-related additional functions of local authorities have created additional spending needs appears to be self-evident. At the same time, as municipalities are responsible for many basic services such as water supply and waste treatment, their potential to cut costs is limited. In Germany, expenses of waste collection have actually even grown over the last year because people have become accustomed to online shopping resulting in an enormous amount of packaging material. Unsurprisingly, a recent survey conducted by the Committee of the Regions and the OECD forecasts significant local expenditure increases due to COVID-19 regarding social welfare and public health, as well as moderate increases in education and public transport.⁵⁷

45. Some countries have opted to immediately compensate municipalities for directly pandemic-related extra spending. Finland, for instance, has launched discretionary grants to reimburse additional hospital costs, especially for intensive care. In other countries, also regional authorities have been involved in the compensation of additional local expenses. The German *Land* of Rhineland-Palatinate has provided a supplementary budget to its municipalities to fight the pandemic and left it to them to decide on the concrete use of the funds.⁵⁸ Moreover, the federal government made funds available to local health agencies, specifically, for better digital equipment and for more staff to bolster efforts of “testing, tracing and isolating”. To support these efforts the *Länder* also deployed part of its personnel temporarily in these agencies which can be seen as an in-kind contribution to the coverage of extra expenses of local authorities.

53 Venice Commission, Reflection report on Respect for Democracy, Human Rights and the Rule of Law during States of Emergency, 26 May 2020, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2020\)005rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2020)005rev-e), para 60.

54 Nikos Chlepas (Greece) at the debate on the challenges of the Covid-19 pandemic of the Congress Group of Independent Expert on the European Charter of Local Self-Government (GIE), 18 September 2020, <https://www.coe.int/en/web/congress/-/congress-group-of-independent-experts-on-the-charter-discussed-consequences-of-covid-19-on-government-systems-in-europe>.

55 OECD, The territorial impact of COVID-19: Managing the crisis across levels of government, 10 November 2020, https://read.oecd-ilibrary.org/view/?ref=128_128287-5agkkojaaa&title=The-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government, 16.

56 OECD, The territorial impact of COVID-19: Managing the crisis across levels of government, 10 November 2020, https://read.oecd-ilibrary.org/view/?ref=128_128287-5agkkojaaa&title=The-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government, 28.

57 Committee of the Regions and OECD, The impact of the COVID-19 crisis on regional and local governments: Main findings from the joint CoR-OECD survey, <http://www.oecd.org/regional/multi-level-governance.htm>, 18.

58 European Committee on Democracy and Governance and COVID-19, [https://www.coe.int/en/web/good-governance/cddg-and-covid#\(%2264787140%22:\[\]\)](https://www.coe.int/en/web/good-governance/cddg-and-covid#(%2264787140%22:[])).

46. What the latter themselves can do in addition to such support from other government levels is to increase spending efficiency. In this context, it is interesting to see that in a recent survey half of the respondents representing Southeast Europe municipalities reported plans to conduct spending reviews to ensure the right priorities in the utilization of scarce financial resources.⁵⁹

2.3.2 Decreased revenue

47. In countries all over Europe, Ministries of Finance, national associations of local governments and research institutes have carried out a number of studies to gauge the financial impact of the pandemic. Even if these forecasts of course show differences across and within countries, they all point to significant losses of local government revenue.⁶⁰ In a number of cases, however, some compensation for these shortfalls has been provided. The key question is whether this has been adequate.

48. When it comes to revenue three main sources need to be taken into account, i.e. fees, borrowing and taxes. Although fees, or user charges, are often very far from even covering the costs of the services provided, they still play in some countries a quite substantial role. COVID-19 has entailed a decrease in revenue from this source as a result of the closure of public facilities (e.g. cultural, educational or sports venues) and a reduced demand for public services (e.g. public transport, school meals, car parks, administrative fees).⁶¹ In some countries, governments have started to address the problem of reduced income from user charges with Norway, for instance, providing compensation for diminished fees for kindergartens and after-school programmes.

49. In some countries, a second primary source of local revenue is borrowing, even if it is often subject to tight control such as restrictions regarding the maximum loan amount or the purpose of the expenditure financed or even prior approval. The existence of such control mechanisms has also nurtured scepticism, at least among Southeast European municipalities, regarding local borrowing as a main pillar of their refinancing.⁶²

50. There are, however, other countries where this source of revenue has been given more attention. Again, Norway is a good example. In view of the COVID-19 crisis, the Norwegian financial agency for local governments *Kommunalbanken* (KBN), a state-owned company and largest provider of debt financing to municipalities, has been granted an additional NOK 750 million of equity capital.⁶³ This should substantially support the refinancing of the Norwegian local authorities.

51. The third and certainly by far most critical revenue source for Europe's local authorities are taxes, most typically commercial taxes, as well as property taxes on land and buildings. The latter are the most traditional local government tax and commonly exclusively assigned to them. Yet, they often do not generate large proceeds because the revenue from property rates does not increase, unlike that from progressive taxes, with economic growth. Ironically, exactly this character as a less volatile revenue source works to the benefit of the municipalities in times of crisis. However, if the tax is calculated based on the property's market value or constitutes, like in the United Kingdom, Ireland and the Netherlands, a large share of local income, losses may still be substantial.

52. Anyway, there is no doubt that COVID-19 has had a strong impact on the various kinds of commercial taxes which are the mainstay of income, for instance, for municipalities in Germany, Austria and Luxemburg where they make up 44%, 68% and 91% of the total local revenue, respectively.⁶⁴ It is self-evident that the enormous reduction in business activities, particularly in the services sector, brings about a sharp decline of

59 NALAS et al, Survey: South-East European Local Governments in Post Covid-19 Socio-Economic Recovery, 16 September 2020, http://www.nalas.eu/News/Survey_Covid19, 84.

60 For an overview of these studies, see OECD, The territorial impact of COVID-19: Managing the crisis across levels of government, 10 November 2020, https://read.oecd-ilibrary.org/view/?ref=128_128287-5agkkojaaa&title=The-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government, 18-19.

61 OECD, The territorial impact of COVID-19: Managing the crisis across levels of government, 10 November 2020, https://read.oecd-ilibrary.org/view/?ref=128_128287-5agkkojaaa&title=The-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government, 28.

62 NALAS et al, Survey: South-East European Local Governments in Post Covid-19 Socio-Economic Recovery, 16 September 2020, http://www.nalas.eu/News/Survey_Covid19, 83.

63 <https://www.kbn.com/en/about-us/news/2020/kapitaltilforsel/>.

64 OECD, The territorial impact of COVID-19: Managing the crisis across levels of government, 10 November 2020, https://read.oecd-ilibrary.org/view/?ref=128_128287-5agkkojaaa&title=The-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government, 27.

income from commercial taxes. For example, the revenue from the so-called municipal tax (*Kommunalsteuer*) in Austria, which employers need to pay based on the gross income of their employees, is expected to shrink by 20-40%. Less payments due to rising unemployment and a widely used partial furlough scheme account for that.⁶⁵

53. Besides the widespread local commercial and property taxes, municipalities in rather few countries also have access to income taxes. One notable case is Switzerland where local authorities may impose, within the limits of cantonal legislation, a surcharge on personal and corporate income taxes of their canton. This has led to considerable tax level variations not only across cantons but also within them.⁶⁶ Another example are Iceland's municipalities for whom income tax revenue constitutes as much as 61% of their total income.⁶⁷ As income taxes, regarding both personal and corporate income, show significant volatility in times of a crisis-induced economic downturn, local governments in such countries, especially those relying heavily on this revenue source may be heavily affected by the financial impact of the pandemic. Moreover, as income taxes are often based on the previous year, municipalities will probably bear the brunt of the losses only in 2021 or even 2022.

54. With respect to all the above types of taxes it must be pointed out that the economic recovery packages that are currently adopted across Europe may have negative implications. Since they often include for the sake of stimulating growth counter-cyclical tax measures like tax breaks, exemptions, and rate reductions, a "mechanical decline in tax receipts"⁶⁸ can be expected. Exactly that has been pointed out with regard to Austria. Recent calculations suggest that financial transfers from the federal government in the amount of 1 billion EUR will be effectively equalized by 1,1 billion EUR that municipalities are expected to lose in revenues due to the tax cuts foreseen in the recovery package to relaunch the economy.⁶⁹

55. And yet, such financial transfers are in Austria as well as other European countries an essential supplement to the above-mentioned own revenues of local authorities. Funds channelled from the central and/or regional governments to municipalities can come in various forms such as unconditional or earmarked grants or the distribution of revenue from shared taxes set and collected by higher levels of government and they have been affected differently by the COVID-19 crisis.

56. As for shared taxes, Austria's municipalities, for example, have traditionally relied heavily on this revenue source. 86 % of all revenue raised in the country fall within a shared taxation system for which the federal Financial Equalization Law determines every four years the portions of each government level. Proceeds from this source transferred by the federal government have in 2018 accounted for 39% of the total revenues of municipalities. Importantly, shared taxes do not only include virtually all lucrative sources but also many which are sensitive to economic downturns will result in the wake of the pandemic in diminishing receipts, especially from the corporate and personal income taxes.⁷⁰

57. Some countries have reacted quickly to this threat to the financial health of local authorities by introducing extraordinary grants or by adapting existing schemes. In the latter regard, Cyprus has decided, for instance, that regular annual grants, which are usually transferred quarterly, are made available to municipalities at an earlier stage.⁷¹

58. In many cases, however, new transfers have been established not only for short-term aid to cope with the acute crisis but – in the framework of economic recovery packages – also regarding shortfalls in the long run. Such packages, which are even larger than those adopted in 2008, have been launched all over Europe and they mostly focus on public investment in three priority areas, i.e. robust health systems, digitalisation

65 P Biwald and K Mitterer, Städte und Gemeinden in der Corona-Krise: Ist ein Rettungspaket notwendig? <https://www.kdz.eu/de/content/st%C3%A4dte-und-gemeinden-der-corona-krise-%E2%80%93-ist-ein-rettungspaket-notwendig>.

66 See IB Adamovich and G Hosp, 'Fiscal Federalism for Emerging Economies: Lessons from Switzerland?' (2003) 33 *Publius*, 7-11.

67 <https://www.coe.int/en/web/good-governance/cddg-and-covid#%7B%2264787140%22%3A%5B%5D%7D>.

68 OECD, The territorial impact of COVID-19: Managing the crisis across levels of government, 10 November 2020, https://read.oecd-ilibrary.org/view/?ref=128_128287-5agkkojaaa&title=The-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government, 27.

69 K Mitterer, Corona-Krise trifft Gemeinden auch 2021 stark: Weitere Unterstützungsmaßnahmen sind erforderlich, <https://www.kdz.eu/de/content/corona-krise-trifft-gemeinden-auch-2021-stark>.

70 Biwald, Peter and Karoline Mitterer 2020. Städte und Gemeinden in der Corona-Krise: Ist ein Rettungspaket notwendig? *KDZ* <https://www.kdz.eu/de/content/st%C3%A4dte-und-gemeinden-der-corona-krise-%E2%80%93-ist-ein-rettungspaket-notwendig>.

71 European Committee on Democracy and Governance and COVID-19, Cyprus, <https://www.coe.int/en/web/good-governance/cddg-and-covid#%7B%2264787140%22%3A%5B%5D%7D>.

and a green economy.⁷² One key issue is then for local authorities whether grants are only broadly earmarked for these purposes or come with excessively detailed conditions. Another issue is whether co-financing schemes make sense. In Austria, for instance, transfers to the municipalities for local investments are bound to a 50% own contribution and it is expected that some local authorities will struggle to reach this co-financing quota due to their dire finances.⁷³

59. Generally speaking, the financial situations of European local governments differ significantly. On the one hand, a recent survey highlighted that most municipalities in Southeast Europe are likely to suffer in 2020 from a fall of revenues by 5-15% compared to the previous year.⁷⁴ The Congress Bureau was therefore right to underline that local authorities “have been among those most affected by the decline in economic output.”⁷⁵ On the other hand, there are also single promising cases. One example are Belgian municipalities whose financial clout has actually increased in the wake of the COVID-19 crisis along with increased functions.⁷⁶ The fact that local authorities have taken centre stage after decades of state reforms focused almost entirely on mending the relations between Belgium’s regional authorities illustrates the positive effects which the pandemic may have on local self-government – at least in single cases. In other countries, however, the financial autonomy of local authorities has been seriously affected.

2.4 Consultation of local authorities

60. Situations of crisis, and especially one of such magnitude as COVID-19, often do not only entice central governments into reducing the scope of local self-government⁷⁷ but also into neglecting established mechanisms of consulting municipalities. As the Venice Commission has recently pointed out “[the speed factor applies with greater, or much greater force, in an emergency where the situation can change rapidly. Concentration of decision-making power in the government, or a single government minister, usually creates a greater potential for speed.”⁷⁸

61. Yet, the obligation to consult under Article 4(6) of the Charter must also be met in times of crisis. According to this provision, “[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.” As for the reach of this obligation, the Explanatory Report clarifies that the provision includes both matters within the scope of local government competences and those “outside their scope but by which they are particularly affected”. There should be little doubt that local authorities are affected in such a way by any policy of central and regional governments to manage the pandemic. Specifically, regarding finances, the further obligation must be observed under Article 9(6) that “local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.”

62. In the thick of the acute COVID-19 crisis municipalities actually have been consulted in several countries despite the above-mentioned need for speed. Slovak local authorities have been part along with representatives from other government levels of the permanent crisis team tasked with tackling the pandemic. Similarly, representatives from the National Association of Italian Municipalities (ANCI) have been involved in the daily crisis meetings of the Civil Protection Department, which is under the authority of the Prime Minister, and therefore have had opportunities to make their voices heard right at the centre of power.⁷⁹ Quite remarkably, the pandemic has also managed to resuscitate Italy’s system of three standing intergovernmental conferences two of which include the municipalities as well. Instead of relying in these

72 OECD, The territorial impact of COVID-19: Managing the crisis across levels of government, 10 November 2020, https://read.oecd-ilibrary.org/view/?ref=128_128287-5agkkojaaa&title=The-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government, 33.

73 Mitterer, Karoline 2020a. Gemeinden: Ein Fels in der Brandung der Corona-Krise?! *KDZ* <https://www.kdz.eu/de/content/gemeinden-%E2%80%93-ein-fels-der-brandung-der-corona-krise>.

74 NALAS et al, Survey: South-East European Local Governments in Post Covid-19 Socio-Economic Recovery, 16 September 2020, http://www.nalas.eu/News/Survey_Covid19, 83.

75 Congress Bureau, Declaration on the impact of central government COVID-measures on local and regional authorities, 9 June 2020, https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=09000016809ea2f8.

76 European Committee on Democracy and Governance and COVID-19, Belgium (Flemish Region), <https://www.coe.int/en/web/good-governance/cddg-and-covid#%2264787140%22:11>.

77 See section 2.1 above.

78 Venice Commission, Reflection report on Respect for Democracy, Human Rights and the Rule of Law during States of Emergency, 26 May 2020, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2020\)005rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2020)005rev-e), para 70.

79 European Committee on Democracy and Governance and COVID-19, <https://www.coe.int/en/web/good-governance/cddg-and-covid#%2264787140%22:11>.

conferences on financial and political pressure, the central government has started to take them serious as venues of consultation because of the need implied by COVID-19 to work together.

63. In other cases, consultation has occurred regarding the response to the social and economic challenges of the pandemic rather than the acute public health challenge. For example, Iceland's Minister of Local Government set up a special working group involving representatives of the municipalities to analyse the effects on local finances. It is probably due to the participation of local politicians in this body that the central government eventually demonstrated awareness of the differential impact and decided to provide special grants to the most disadvantaged municipalities, mostly those suffering from the collapse of tourism.⁸⁰

64. In many countries, however, there is still potential to improve consultation. According to a recent investigation, for instance, only a third of the social and economic recovery plans in Southeast Europe have been consulted with local authorities and their associations.⁸¹

2.5 Participation in the affairs of local authorities

65. While the provisions of the Charter addressed in the four previous sections all concern the relations between local authorities and other government levels, this section explores a new dimension. It brings in the people and their right to participate in the affairs of a local authority, as enshrined in the Additional Protocol to the Charter. Obviously, the related issues of local ownership and transparency have been both particularly endangered by COVID-19 crisis and crucial to overcoming it.

66. The standard also for times of crisis is set by Article 1 of the Additional Protocol which enshrines "the right to participate in the affairs of a local authority" defined as "right to seek to determine or to influence the exercise of a local authority's powers and responsibilities." Article 2 lists in a non-exhaustive manner a number of possible measures to implement this right, ranging from local referendums and consultations, over complaint procedures to access to official documents. It is easy to see that all these exemplary measures to ensure public participation have been difficult to realize in the context of pandemic-related restrictions on the freedom of movement and the right of assembly.

67. It is beyond doubt that COVID-19 has severely affected local democracy in several respects, beyond people's direct participation, even its dimension of representative democracy. At a debate organised by the Congress, it was mentioned that local councils in Belgium were long only held via e-mail and that decisions of enormous consequence were sometimes made without real debate. Describing these problems, which have probably emerged in other countries too, reference was made to a "lockdown of local democracy".⁸² Other local politicians observed a "suspension of democracy" only at the outset of the crisis and highlighted, at the same time, the potential of online meetings. Beyond being merely temporary solutions for the time of the pandemic online council meetings can be considered as complementary to face-to-face meetings in future local democracy which would also have the positive side effect of increasing the number of potential participants.⁸³

68. This vision sounds intriguing but online meetings including the public as passive or even active participants face two problems, one being of practical nature and the other being related to the purpose and deeper understanding of the Charter and the Additional Protocol.

69. A practical obstacle for a comprehensive shift towards public participation online is inequality regarding the access to the internet and this has become apparent in particular during the times of COVID-19. It is true that some cities have initiated formidable initiatives with Reims in France, for example, inviting people to voice their ideas for the post-pandemic time on a digital platform and committing to implementing projects

80 European Committee on Democracy and Governance and COVID-19, Iceland, [https://www.coe.int/en/web/good-governance/cddg-and-covid#\(%264787140%22:10\]](https://www.coe.int/en/web/good-governance/cddg-and-covid#(%264787140%22:10]).

81 NALAS et al, Survey: South-East European Local Governments in Post Covid-19 Socio-Economic Recovery, 16 September 2020, http://www.nalas.eu/News/Survey_Covid19, 84.

82 Marc Cools (Belgium, ILDG) at a debate of the Monitoring Committee of the Congress of Local and Regional Authorities, 17 September 2020, <https://www.coe.int/en/web/congress/-/the-covid-19-pandemic-must-not-lead-to-a-lockdown-of-local-democracy>.

83 Martin Fodor (United Kingdom, SOC/G/PD) at a meeting of the Governance Committee of the Congress of Local and Regional Authorities, 15 September 2020, <https://www.coe.int/en/web/congress/-/recentralisation-is-not-a-miracle-cure-for-the-covid-pandemic-congress-expert-says>.

approved by a popular vote.⁸⁴ But such initiatives are rather urban-specific and hard to imagine in other contexts. In Poland, for example, only around half of the households in villages have access to broadband internet,⁸⁵ which not only complicates online access to public services but also public participation. As low profitability and high costs of connecting peripheral areas still hamper digitalisation, this urban-rural digital divide is a more general issue that affects a number of European countries.

70. A second important issue concerns the Charter and the Additional Protocol. While opening up to various forms of online participation might indeed significantly strengthen people's right to local participation, a massive change in this direction also has implications for the very understanding of local self-government in Europe. Such a change towards virtual participation, if it included, for example, beyond the above-mentioned access to official documents also access to meetings,⁸⁶ might (and arguably should) revive a debate on the purpose of the Charter and Additional Protocol. Are they essentially about "rights of local governments in relations to central governments" thus excluding "any obligations, or commitments, of local governments towards their citizens"⁸⁷? Or are they (also) about a relationship of rights and obligations between individuals and local authorities because, in the words of the Explanatory Report, "by adding rights of individuals to the possible substantive provisions of the Charter its role as a beacon for democracy can only be enhanced"?

3. Recurring Issues of the Charter implementation revisited: Changes in the wake of COVID-19?

71. The preceding sections have demonstrated the great extent to which Europe's local authorities have been at the frontline of the fight against the pandemic. A follow-up question is then whether and to what degree this new situation of local governments in a fundamentally changed reality has also changed the recurring issues which the monitoring of the implementation of the Charter has revealed over the years. In this respect, the Congress has drafted two documents that highlighted the most problematic of these recurring issues during the last decade.⁸⁸

72. Regarding the scope of local self-government (Article 3 and 4), two main issues identified in these documents are the following: the limited conferral of genuine local government functions, which also impacts negatively on the quality of public services they can deliver, and the imprecise delimitation of the competences of different government levels resulting in overlaps.⁸⁹

73. The impact of COVID-19 on the first issue seems ambiguous. On the one hand, local authorities have been granted or have taken over de facto a number of new functions in response to the above-mentioned public health, societal and economic challenges. This is in line with a demand of the Congress according to which "local authorities should not be limited to secondary tasks and routine duties" but also "elaborate and implement local public policies for the benefit of the local population."⁹⁰ On the other hand, the new competences have certainly often stretched to the limits the financial and administrative capacities of local governments and therefore complicated the provision of their "traditional" public services.

74. Another issue of particular relevance regarding the COVID-19 crisis are overlapping responsibilities, since "without clarity about which level is responsible for which function, neither higher level authorities nor

84 Eurocities, Preliminary overview of city measures to mitigate the socio-economic impact of COVID-19, 1 July 2020, http://nws.eurocities.eu/MediaShell/media/Overview_of_city_measures_to_mitigate_the_socio-economic_impact_of_COVID-19_updated_1_July.pdf, 8.

85 Polish Statistics Office, 'The Use of Information and Communication Technologies in Public Administration Units, Enterprises and Households in 2019', 1 June 2020, <https://stat.gov.pl/obszary-tematyczne/nauka-i-technika-spoleczenstwo-informacyjne/spoleczenstwo-informacyjne/wykorzystanie-technologii-informacyjno-komunikacyjnych-w-jednostkach-administracji-publicznej-przedsiębiorstwach-i-gospodarstwach-domowych-w-2019-roku.3.18.html>.

86 C Himsworth, *The European Charter of Local Self-Government: A Treaty for Local Democracy* (Edinburgh, Edinburgh University Press, 2015) 82-83.

87 Jeremy Smith, Secretary General of the Council of European Municipalities and Regions (CEMR) on the occasion of the Charter's 20th anniversary in 2005, quoted in C Himsworth, *The European Charter of Local Self-Government: A Treaty for Local Democracy* (Edinburgh, Edinburgh University Press, 2015) 83.

88 Congress of Local and Regional Authorities, *Recurring issues based on assessments resulting from Congress monitoring and election observation missions* (reference period 2010-2016), CG32(2017)19final, 28 March 2017; Congress of Local and Regional Authorities, *Recurring issues based on assessments resulting from Congress monitoring of the European Charter of Local Self-Government and election observation missions* (reference period 2017-2020), CG/MON(2021)03-prov, 24 June 2020.

89 Congress of Local and Regional Authorities, *Recurring issues based on assessments resulting from Congress monitoring and election observation missions* (reference period 2010-2016), CG32(2017)19final, 28 March 2017, para 8.

90 Congress of Local and Regional Authorities, *Recurring issues based on assessments resulting from Congress monitoring of the European Charter of Local Self-Government and election observation missions* (reference period 2017-2020), CG/MON(2021)03-prov, 24 June 2020, para 29.

citizens will know which actor to hold accountable.”⁹¹ Overlaps are indeed a very real problem with repercussions not only on accountability but also on efficiency. At the same time, they are in a world of complex governance challenges which require intergovernmental collaboration to some extent inevitable, which is also cautiously recognised by the Explanatory Report on Article 4(4) regarding full and exclusive powers.⁹² It probably goes without saying that COVID-19 has been a quintessential complex governance challenge so that collaboration between governments is the order of the day.

75. As for administrative supervision (Article 8), the Congress often highlighted in its monitoring that oversight is excessive in law or in practice and therefore considerably limits the discretion of local authorities.⁹³ Therefore, supervision should always be proportional to the importance of the interests that it is intended to protect.⁹⁴ In a situation of major crisis like the pandemic, of course, higher government levels could easily argue that the vital importance of overcoming COVID-19 justifies tighter control. It must be borne in mind, however, that this is not an interest of one government that it must safeguard vis-à-vis others but a *common* interest of all which is best pursued together in a spirit of cooperation, not imposition.

76. When it comes to the supervisory authority the Explanatory Report states that Article 8 is about oversight carried out “by other levels of government”, i.e. by central or regional governments. Yet, the contemporary comment by the Congress on this report ponders that “it might be considered to include administrative supervision exercised by other authorities, for instance the supervision of a municipality by a province, county or island authority.”⁹⁵ Not least in light of COVID-19 this indeed appears to deserve consideration, as the just mentioned second-tier local authorities have actually often played a significant part in controlling municipalities. A case in point is the controversy regarding ordinances issued by municipalities of the island of Ischia in Italy which were nullified by the prefect as an organ of province within his supervisory powers under Italian local government law.

77. The third area highlighted in this report, i.e. financial resources of local authorities (Article 9), has raised a particularly high number of issues during the monitoring activities of the Congress. The many problems identified range from an over-centralized system of financing over a limited level of own income to the lack of transparent and predictable financial equalisation mechanisms.⁹⁶ The most general issue of the inadequacy of funds has of course been worsened in many cases during the pandemic due to the spending increase resulting from the above additional functions of local governments and decreased revenue in times of an economic downturn.

78. For genuine financial autonomy it is crucial, as the Congress emphasises, not only to have sufficient own resources but also to be free to determine expenditure priorities.⁹⁷ Evidently, the latter may be at odds with the desire of central and/or regional governments to define these priorities themselves by using conditional grants, particularly regarding policies that are so much exposed to public scrutiny and contested like the fight against the pandemic. With economic recovery packages being launched in many European countries, the issue of whether grants to municipalities for public investment are attached to excessively detailed conditions or allow them to define spending priorities is certainly an issue that merits close monitoring for years to come.

79. This leads to another topic concerning local finances which the Congress has identified as crucial for the implementation of the Charter, i.e. financial autonomy in the long run which is decisive for municipalities to engage in long-term planning.⁹⁸ Especially in times of a crisis and its aftermath such autonomy seems to

91 Ibid, para 34.

92 The Explanatory Report does not argue in favour of a rigid exclusivity rule but acknowledges that “most affairs have both local and national implications and responsibility for them ... may even be shared between different levels of government.”

93 Congress of Local and Regional Authorities, Recurring issues based on assessments resulting from Congress monitoring and election observation missions (reference period 2010-2016), CG32(2017)19final, 28 March 2017, para 8.

94 Congress of Local and Regional Authorities, Recurring issues based on assessments resulting from Congress monitoring of the European Charter of Local Self-Government and election observation missions (reference period 2017-2020), CG/MON(2021)03-prov, 24 June 2020, para 38.

95 Ibid, para 123.

96 Congress of Local and Regional Authorities, Recurring issues based on assessments resulting from Congress monitoring and election observation missions (reference period 2010-2016), CG32(2017)19final, 28 March 2017, para 6.

97 Congress of Local and Regional Authorities, Recurring issues based on assessments resulting from Congress monitoring of the European Charter of Local Self-Government and election observation missions (reference period 2017-2020), CG/MON(2021)03-prov, 24 June 2020, para 9.

98 Congress of Local and Regional Authorities, Recurring issues based on assessments resulting from Congress monitoring and election observation missions (reference period 2010-2016), CG32(2017)19final, 28 March 2017, para 7.

be achievable only if sources of local incomes are “sufficiently diverse in nature to ensure resilience of local authorities to external economic factors”.⁹⁹

80. The fourth area addressed in this report, i.e. the consultation of local authorities, has been a similarly critical issue during monitoring issues even before the pandemic. The Congress mentioned as recurring issues specifically the widespread lack of appropriate consultation on local finance matters (Article 9(6)),¹⁰⁰ as well as the absence of formal mechanisms, their insufficient use or controversies about the means and (limited) time frame (Article 4(6)).¹⁰¹ All these issues have without doubt even gained more importance in the context of COVID-19 politics in which meaningful consultation tends to be seen by many as antithetical to the imperative of speedy and efficient decision-making. It would be easy for central and regional governments to refer to statement in Article 4(6) that consultation take place only “insofar as possible” and thus brush aside in an extraordinary crisis requests from municipalities to be heard. Yet, this report does not paint an entirely negative picture but also reveals several examples of how local authorities have been included in mechanisms of acute crisis management. It will be key to ensure that they are also given opportunities to voice their interests concerning the recovery from the pandemic.

81. One specific issue linked to consultation has been recurring frequently during the monitoring of the Charter implementation, i.e. the role of local government associations. This deserves particular scrutiny since the Explanatory Report underlines that consultation can take place “directly with the authority or authorities concerned or indirectly through the medium of their associations where several authorities are concerned.” COVID-19 and its aftermath are certainly issues that concern several authorities so that municipalities can only benefit from working together multilaterally in strong representative associations.

82. In terms of the right to participate in local affairs as the fifth area featured in the report, there seems to be no doubt that this merits particular attention in activities of the Congress in a mid- and long-term perspective. This report has pointed out that the new reality of the pandemic has not only complicated representative democracy at the local level. It also adversely affected practically all tools of public participation listed in Article 2 of the Additional Protocol, from consultations to access to official documents that are not easily available online. Nevertheless, there also lies an opportunity in certain changes triggered by COVID-19 such as digitalisation. Online democracy as a complementary tool to more traditional tools could be harnessed to increase transparency and participation in the local political process thereby also fostering people’s feeling of ownership. In this light, it will, among other things, depend on European local authorities themselves and the Congress activities supporting them to make sure that the above-mentioned “lockdown of local democracy” or, for that matter, even a substantial diminishment of local democracy is avoided.

4. Recommendations to national, regional and local authorities

83. This report aimed to take stock of the role played by European local authorities in managing the fallout from COVID-19 and to identify the main issues and challenges regarding the implementation of the Charter. In some respects, the pandemic has confronted municipalities with entirely new challenges that were hard to imagine in previous times. In other respects, it has rather aggravated issues that the Congress and other organizations had repeatedly addressed for a long time. Put differently, COVID-19 has put “a magnifying glass on the many shortcomings we were already aware of, such as the need to preserve public service provision and, particularly, the health care for citizens, the need to reduce the digital divide particularly for child education and to facilitate teleworking, the urgency to ensure adequate housing and basic services for the more vulnerable population and to secure livelihoods.”¹⁰²

84. In light of the above, the following policy actions are recommended to local, regional and national authorities of the member States:

99 Congress of Local and Regional Authorities, Recurring issues based on assessments resulting from Congress monitoring of the European Charter of Local Self-Government and election observation missions (reference period 2017-2020), CG/MON(2021)03-prov, 24 June 2020, para 9.

100 Congress of Local and Regional Authorities, Recurring issues based on assessments resulting from Congress monitoring and election observation missions (reference period 2010-2016), CG32(2017)19final, 28 March 2017, para 6.

101 Ibid, para 11.

102 United Cities and Local Governments, Decalogue for the post COVID-19 era, 21 April 2020, https://www.uclg.org/sites/default/files/decalogue_for_the_post_covid-19_era.pdf, 2.

- a. to recognise that COVID-19 is not “the great equalizer” but has a *differential impact on Europe’s local governments*. Some of them have been more affected by the pandemic due to their demographics, social structure, economic focus on the services sectors or a number of other reasons. Given this differential impact, policies of both acute crisis management and recovery should treat municipalities appropriately rather than strictly in the same way by placing a particular focus on those which the crisis has hit hardest.
- b. to ensure that *short-term centralisation*, which some countries have attempted to legitimise with the crisis-related need for swift and simplified decision-making, is not perpetuated. The Venice Commission rightly reminds us that emergency powers have as “in-built guarantees against abuse ... the principles of necessity, of proportionality and of temporariness”.¹⁰³ These same principles should also form the standard which the continuation of discontinuation of crisis-related centralisation needs to be measured against.
- c. to avoid the *long-term centralisation* of competences and the related financial resources which often follows situations of crisis. The Congress has identified such a trend especially in the wake of the global financial crisis of 2007-08 with austerity and rationalisation programmes being used by some governments to justify a reduction of local self-government.¹⁰⁴ It is essential not to repeat the mistake of centralization incompatible with Articles 4 and 9 of the Charter when financial resources will again be scarce as the pandemic drags on.
- d. to support local authorities in their efforts to *tackle the public health, societal and economic challenges* that COVID-19 entails. This requires to provide for the sake of coordination instant and systematic information on national and regional measures, to further facilitate the exchange of both good and bad practices regarding crisis management both within and across national borders, to boost intermunicipal cooperation and, above all, to guarantee that local governments can carry out their new functions with freedom from excessive supervision and with adequate financial resources.
- e. to *increase own revenues* of local authorities in view of a double negative effect. COVID-19 has entailed for many of them significantly higher spending needs, especially regarding public health and social welfare. On the revenue side, the economic downturn has led to an income shortfall which might even worsen in light of tax cuts being foreseen in recovery packages as counter-cyclical tax measures. In order to make municipalities crisis-proof reforms of local government financing should pay attention to ensure as much as possible a diversification of revenue sources, including also taxes that are less volatile in times of an economic downturn.
- f. to ensure that *conditions attached to financial transfers* are not excessive but provide leeway for local authorities to determine their own spending priorities. For the sake of local self-government, transfers that are only broadly earmarked for certain purposes rather than bound to detailed conditions must be preferred regarding both grants compensating municipalities for current pandemic-related extra spending and the local public investments foreseen in recovery packages.
- g. to design or re-design recovery and crisis prevention plans in such a way that *effective consultation* of local authorities is ensured. The Congress Bureau has rightly identified such involvement as crucial for both mastering the current pandemic and enhancing resilience in the face of future crises.¹⁰⁵ Effective consultation of local governments ensures the sense of local ownership needed for any policies to be implemented successfully at grassroots’ level. It is therefore as much in the interest of higher government levels as in the interest of municipalities themselves.
- h. to promote *public participation* online as complementary to more traditional forms of participation. The resulting hybrid model of local democracy could enable a higher number of people involved, an increased sense of ownership of local affairs and improved transparency. Digital participation should therefore be facilitated to the extent this is practical in view of inequality regarding internet access and compatible with the political culture of each member State of the Council of Europe.

103 Venice Commission, Reflection report on Respect for Democracy, Human Rights and the Rule of Law during States of Emergency, 26 May 2020, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2020\)005rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2020)005rev-e), para 121.

104 Congress of Local and Regional Authorities, Recurring issues based on assessments resulting from Congress monitoring of the European Charter of Local Self-Government and election observation missions (reference period 2017-2020), CG/MON(2021)03-prov, 24 June 2020, para 67.

105 Congress Bureau, Declaration on the impact of central government COVID-measures on local and regional authorities, 9 June 2020, https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=09000016809ea2f8.