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Local and regional democracy in Spain

Monitoring Committee
Rapporteurs: Marc COOLS, Belgium (L, ILDG[1])
Leen VERBEEK, The Netherlands (R, SOC)

Summary

This report on the situation of local and regional democracy in Spain follows up on Recommendation 121 (2002) and the two monitoring visits carried out on 5 to 8 June 2012 and 14 January 2013. The rapporteurs are satisfied that Spain is generally fulfilling its obligations with regard to the Charter and welcome the direct incorporation of the Charter into Spain's national law, which enables legal interpretation by the domestic courts. They also note with satisfaction the regular working relationship between the Central Government and the FEMP, as well as the entry into force of the Law on budgetary stability and financial sustainability of public administration in 2012, which serves to reduce transfers of public resources and strengthen the capacity of public administrations to control their own expenses. However, the rapporteurs regret the overlap of competences among various government levels, which results in a loss of financial resources for local and regional authorities, the inefficiency of the policies and measures with regard to the fiscal autonomy of municipalities, a situation which obliges local authorities to depend on state and regional transfers, and the large disparity in the salaries of local elected officials and the reduction of deputies' allowances in regional parliaments.

The rapporteurs recommend that the Spanish authorities take concrete measures to eliminate the duplication of competences between different levels of government and ensure that each transfer of powers to local authorities is guaranteed by adequate financial resources, boost the fiscal autonomy of municipalities, with the aim of ensuring the sustainability of the financial situation of local authorities. The rapporteurs also recommend a revision of the legislation in order to fix a minimum and maximum threshold for remunerating local elected officials in accordance with the provisions of the Charter and, in the same spirit, to provide rules of remuneration for members of the parliaments of the Autonomous Communities, which will allow them to perform their duties properly. Lastly, they encourage the Spanish authorities to sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) in the near future.

[1] L: Chamber of Local Authorities / R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress
SOC: Socialist Group
ILDG: Independent Liberal and Democratic Group
ECR: European Conservatives and Reformists Group
NR: Not registered

Local and regional democracy in Spain

RECOMMENDATION 336 (2013)[2]

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

a. Article 2, paragraph 1.*b.* of Statutory Resolution CM/Res(2011)2 of the Committee of Ministers of the Council of Europe relating to the Congress of Local and Regional Authorities, which stipulates that one of the aims of the Congress is "to submit proposals to the Committee of Ministers in order to promote local and regional democracy";

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

c. Resolution 307 (2010) (revised) on Procedures for monitoring the obligations and commitments entered into by the Council of Europe member states in respect of their ratification of the European Charter of Local Self-Government (ETS No.122);

d. Recommendation 219 (2007) on the status of capital cities, Recommendation 132 (2003) on municipal property in the light of the principles of the European Charter of Local Self-Government and Resolution 299 (2010) of the Congress on the follow-up by the Congress of the Council of Europe Conference of Ministers responsible for Local and Regional Government (Utrecht, Netherlands, 16-17 November 2009);

e. Previous texts on local and regional democracy in Spain – Recommendation 121 (2002) and Resolution 147 (2002).

2. The Congress underlines that:

a. Spain became a member of the Council of Europe on 24 November 1977. It signed the European Charter of Local Self-Government (ETS No. 122, hereafter referred to as "the Charter") on 15 October 1985 and ratified it on 3 February 1988. The Charter entered into force in respect of Spain on 1 September 1988;

b. Spain has declared itself not to be bound by Articles 3.2 of the Charter and has formulated a declaration which reads as follows: "The Kingdom of Spain does not consider itself bound by paragraph 2 of Article 3 of the Charter to the extent that the system of direct suffrage foreseen therein should be implemented in all local authorities falling within the scope of the Charter";

c. Spain has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207), Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (CETS No. 206), the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No.159) or Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation (ETS No.169);

d. The Congress Monitoring Committee appointed Mr Marc COOLS, Belgium (L, GILD) and Mr Leen VERBEEK, The Netherlands (R, SOC) as rapporteurs and instructed them to prepare and submit to the Congress a report on local and regional democracy in Spain in order to update the latest Resolution 147 and Recommendation 121 (2002);

[2]Debated and adopted by the Congress on 19 March 2013, 1st sitting (see document CG(24)6PROV explanatory memorandum), rapporteurs: Marc Cools, Belgium (L, ILDG) and Leen Verbeek, the Netherlands (R, SOC).

e. A first visit to Spain (Seville, Toledo and Madrid) took place from 5 to 8 June 2012. The second monitoring visit to Spain took place in Madrid on 14 January 2013;

f. The delegation would like to thank the Permanent Representation of Spain to the Council of Europe, the Spanish authorities at all level of governance, the national association of Spanish municipalities and Provinces (FEMP) and all the persons with whom discussions took place, for their readiness to assist, their interest in the Congress's work and their cooperation throughout.

3. The Congress notes with satisfaction:

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

b. the direct incorporation of the Charter into Spain's national law, which enables legal interpretation by the domestic courts;

c. the regular working relationship between the Central Government and the FEMP and the existence of a wide variety of instruments for co-operation between the national government and the executives of the autonomous communities;

d. the entry into force of the Law on budgetary stability and financial sustainability of public administration in 2012, which serves to reduce transfers of public resources and strengthen the capacity of public administrations to control their own expenses;

e. the creation in October 2012 of a special Commission to Reform Public Administration, with the scope to eliminate administrative burdens by simplifying rules and procedures, and avoid overlap of competences;

f. the good practices with regard to the right to participate in public affairs at local level;

g. the adoption of the Act No.22/2006 of 4 July 2006 on the Capital Status and Special Regime of Madrid, and the direct reference to the provisions of the Charter in the preamble of this Act.

4. The Congress regrets:

a. the lack of precision concerning the distribution and delegation of competences and responsibilities to local and regional authorities;

b. the overlapping competences among various government levels, which results in a loss of financial resources for local and regional authorities as well as a loss of efficiency of public services delivered to the citizens;

c. the large disparity in the salaries of local elected officials and the reduction of deputies' allowances in regional parliaments;

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

e. the inefficient policies and measures with regard to the fiscal autonomy of municipalities, a situation which obliges local authorities to depend on state and regional transfers and not on their own revenues;

f. the difficulties of management of small municipalities and the insufficient financial equalization procedures or equivalent measures to correct the effects of the unequal distribution of financial sources between smaller and larger municipalities;

g. the proposal of streamlining municipalities which is contained in the Government Reform Programme;

h. the lack of progress in the reform of the Senate in order to confer on this institution a real role of territorial representation.

5. The Congress recommends that the Committee of Ministers invite the Spanish authorities to:

a. ensure that the proposed governmental reforms to transform the Spanish administration into a system in which “one competence corresponds to one administration” is conducted in accordance with the principle of subsidiarity; (Article 4.3)

b. continue, during the preparatory work of the bill for the Local Administration Rationalization and Sustainability Act, the dialogue with both the FEMP and with the various Autonomous Communities taking into account, when possible, the institutional and historical features of some of them for the reforms to be adopted;

c. identify, through the Commission for Reform of Public Administration, concrete measures to eliminate the duplication of competences between different levels of government in order to increase the efficiency of public services; (Article 4.4)

d. revise legislation in order to fix a minimum and maximum threshold for remunerating local elected officials in accordance with Article 7.2 of the Charter and, in the same spirit, to provide rules of remuneration for members of the parliaments of the Autonomous Communities, which will allow them to perform their duties properly;

e. ensure that, in accordance with the legislation, each transfer of powers to local authorities is guaranteed by adequate financial resources; (Article 9.2)

f. boost the fiscal autonomy of municipalities, with the aim of ensuring the sustainability of the financial situation of local authorities, by creating appropriate conditions and policies so that the major form of revenue for municipalities comes from their own resources and not from transfers that are awarded by the regions and by the State; (Article 9.3)

g assure smaller municipalities greater management support from the provincial administration and ensure a system of equalization between municipalities, in order to transfer resources from richer to poorer; (Article 9.5)

h. define in law the relationship between the State, the Conference of Presidents of Autonomous Communities and the FEMP;

i. continue to support local and regional administrations during the governmental reform programme in order to strengthen the capacity of public administration to control their own expenses;

j. ensure that an adequate consultation process is duly organized if the national authorities implement measures to merge municipalities;

k. reform the institution of the Senate with the aim of conferring on this institution a real role of territorial representation;

l. sign and ratify in the near future the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

6. The Congress invites the Committee of Ministers of the Council of Europe to take into consideration the present recommendation on local and regional democracy in Spain, as well as the explanatory memorandum, in its own monitoring procedures and other activities related to this member state.

Local and regional democracy in Spain

EXPLANATORY MEMORANDUM[3]

Table of contents

[3] Adopted by the Monitoring Committee on 13 February 2013.

1. INTRODUCTION

1. Pursuant to Article 2, paragraph 3 of Statutory Resolution (2011) 2 of the Council of Europe Committee of Ministers, the Congress of Local and Regional Authorities (hereinafter referred to as "the Congress") regularly prepares reports on the state of local and regional democracy in all Council of Europe member states.

2. Spain is one of the first States to sign the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter") which it did on 15 October 1985 and ratified by a law that entered into force on 1 September 1988. The Kingdom of Spain does not consider itself bound by paragraph 2 of Article 3 of the Charter to the extent that the system of direct suffrage foreseen therein should be implemented in all local authorities falling within the scope of the Charter.[4]

3. Spain also signed and ratified, on 1 October 1986, the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No.106), which came into force in respect of Spain on 25 November 1990.

4. Spain has not signed:

a) the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207);

b) Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (CETS No. 206);

c) the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No.159);

d) Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation (ETS No.169).

5. The Congress Monitoring Committee appointed Mr Marc COOLS, Belgium (L, ILDG) and Mr Leen VERBEEK, The Netherlands (R, SOC) as rapporteurs and instructed them to prepare and submit to the Congress a report on local and regional democracy in Spain[5].

6. A first visit to Spain (Seville, Toledo and Madrid) took place from 5 to 8 June 2012, and a second visit took place in Madrid on 14 January 2013. During their visits, the Congress monitoring delegation met representatives of the State institutions (Parliament, Government), the Constitutional Court, the Ombudsman, national and regional audit courts, local authorities and their association (for the detailed programme of the visits, please see in Appendices).

7. This report was drafted on the basis of information received during the visits to Spain, extracts from the relevant legislation and other information and documents provided by the representatives of the Spanish authorities, international organisations and experts.

8. The delegation would like to thank the Permanent Representation of Spain to the Council of Europe, the Spanish authorities at all levels of governance, the national association of Spanish municipalities and Provinces (FEMP) and all the persons with whom discussions took place, for their readiness to assist, their interest in the Congress's work and their cooperation throughout this visit.

[4] http://www.conventions.coe.int/treaty/Commun/ListeDeclarations.asp?NT=122&CV=1&NA=&PO=999&CN=999&VL=1&CM=9&CL=FRE

[5] The two co-rapporteurs were assisted by Professor Merloni, president of the Group of Independent Experts on the European Charter of Local Self-Government, and Ms Stéphanie Poirel, Secretary to the Monitoring Committee of the Congress.

2. SITUATION AND POLITICAL DEVELOPMENT OF THE SPANISH ADMINISTRATIVE SYSTEM

2.1. Constitutional and legislative bases of local and regional government in Spain

9. Spain is one of the most decentralised countries in Europe. According to Article 137 of the Spanish Constitution: "The State is organised territorially into municipalities, provinces and Autonomous Communities. All these bodies shall enjoy self-government for the management of their respective interests." According to Article 3 of the Law 7/1985 of 2 April on the Basic Principles of Local Government, the principal Local Entities (*entidades locales*) in Spain are: municipalities (*municipios*), provinces (*provincias*) and islands (*islas*).[6] Apart from municipalities, provinces and islands, there are other local government bodies, namely *mancomunidades* (municipal associations), *comarcas* (counties), metropolitan areas, EATIM - territorial entities smaller than municipalities/infra municipal (*entidades de ambito territorial inferior al municipio*) etc. According to the National Register of Local Government Units[7], in October 2012 there were, in Spain, 8 117 municipalities, 50 provinces, 11 islands, 1 024 *mancomunidades*, 81 *comarcas*, 3 metropolitan areas and 3 721 territorial entities smaller than municipalities/EATIM (*entidades de ámbito territorial inferior al municipio*). Most of the EATIM belong to the Autonomous Community of Castile and León.

Municipalities

10. Municipalities are characterised as towns (*pueblos*) or cities (*ciudades*), according to their size and population.

11. In terms of population size, the largest municipality is Madrid (3 249 000[8] million inhabitants) and the smallest is Illan de Vacas, in Toledo (6 inhabitants). 84% of all municipalities have less than 5 000 inhabitants, but only 13% of the population live in them. There are 15 large cities in Spain, inhabited by 250 000 or more citizens.

Inhabitants	Less than 100	100-1 000	1 001-2 000	2 001-5 000	5 001-10 000	10 001-20 000	20 001-50 000	50 001-100 000	More than 100 000
Number of municipalities	1 074	3 789	928	1 019	554	356	249	83	62

12. One of the most important problems facing local governments in Spain is the very high number of municipalities. There is a huge proportion of little towns, with a low number of inhabitants. Many municipalities have difficulties in providing the essential public services that are obligatory according to the law since they lack the necessary (economic, technical and human) resources to do so. Furthermore, municipalities are not distributed in a balanced way across the nation. Some regions have a higher number of municipalities than others due to their surface area or to other patterns of human settlement.[9] Later in this report the current debates on these issues will be outlined as well as some proposals aiming at merging municipalities in Spain.

Autonomous Community	Total number of municipalities	Total inhabitants	Surface area (in km2)
Castile and León	2 248	2 563 521	93 892
Galicia	315	2 796 089	29 564
La Rioja	174	321 702	5 027
Madrid	179	6 386 932	8 022
Cantabria	102	589 235	5 106
Catalonia	946	7 475 420	30 025
Andalusia	770	8 303 923	87 581

Table: Selected data concerning seven representative regions

[6] The country has two archipelagos, the Canary Islands (seven islands) and the Balearic Islands (four islands). Each major island is considered to be a district local authority.

[7] Source DGCC CCAA EEL, Secretary of State for Public Administration

[8] Madrid Economy 2012, Observatorio Economico

[9] Angel Manuel Moreno, Local Government in the member states of the European Union: a comparative legal perspective, INAP, Madrid, 2012, « Local government in Spain », Chapter 25,

13. Municipalities constitute the “first tier” of local government. The Spanish constitution recognises the municipalities and guarantees their autonomy. Town councils (*ayuntamientos*) are in charge of the municipalities' government and administration.

14. The executive organs of municipalities are composed of the mayor (*alcalde*), the executive committee (*junta de gobierno*), and the vice-mayors (*tenientes de alcalde*). The mayor is the political leader of the city. Unlike most European countries, in Spain, the mayor is not directly elected by the citizens. He is appointed by the councillors and may be removed by them, following a no confidence motion (*moción de censura*). This situation should not lead to the erroneous assumption that the mayor is a subordinate political figure. This is not the case, in Spain, the mayor is the most important and the key political official of the city. He/she is usually the real political leader in the city or town and the politician who is *de facto* accountable.[10] In localities of less than 100 inhabitants however, the mayor is directly elected by the citizens' majority vote; the electoral constituency is co-extensive with the municipality.

15. In municipalities, the most important deliberative body is the council (*pleno del ayuntamiento*). The members of the council (*concejales*) are directly elected by citizens of Spanish and other nationalities[11] every four years in the framework of the general local elections (the last local elections in Spain took place in May 2011). The number of councillors and the electoral procedures are regulated by the General Electoral Act (*Ley Electoral General*).[12]

16. The functions of the plenary council are set out in Article 22 of the Law 7/1985, those of the administrative committee in Article 23(2) and of the Mayor in Article 21 of the same law.

Competences of municipalities

17. The current system of local government is based on Law 7/1985 of 2 April on the Basic Principles of Local Government. The law of 1985 distinguishes between competences (*competencias*) (sections 25-28) and powers (*potestades*) (section 4), which are the legal instruments that local authorities can use in exercising their functions. It lists the matters in which municipalities exercise the functions assigned to them by regional legislation (section 25).

18. Municipalities, in all cases, exercise their powers according to the conditions laid down in the legislation of the state and the Autonomous Communities in the following domains (Law 7/1985, Article 25.2):

- Safety in public places;
- Organisation of traffic and pedestrians on public thoroughfares;
- Civil defence, fire prevention and fighting;
- Planning, management, execution and regulation of urban development; promotion and management of housing, parks and gardens, maintenance of the urban road network and conservation of rural roads and footpaths;
- Historic and artistic heritage;
- Environmental protection;
- Covered markets, abattoirs, fairs, street markets, protection of users and consumers;
- Protection of urban hygiene;
- Participation in the management of first aid and health care services;
- Cemeteries and funeral services;
- Provision of social services, including rehabilitation and resettlement;
- Water supplies, public lighting, street maintenance, collection and disposal of fluid waste;
- Public transport;
- Cultural and sports activities and facilities, recreational activities, tourism;

[10] Ibidem, page 614

[11] Apart from the nationals of the other 26 member states of the European Union, the right to vote is also given to nationals coming from the following countries: Norway, Ecuador, New Zealand, Colombia, Chile, Peru, Paraguay, Iceland, Bolivia and Cape Verde.

[12] According to the Organic Law N°2/2011 of 28 January, which revises the Organic Law n°5/1985 of 19 June on the electoral system, the number of municipal councillors should be 3 for settlements up to 100 inhabitants, 5 councillors for up to 250 inhabitants, 7 between 251 and 1 000, 9 between 1001 and 2000, 11 between 2001 and 5000, 13 between 5 001 and 10 000, 17 between 10 001 and 20 000, 21 between 20 001 and 50 000, and 25 between 50 000 and 100 000. In large municipalities, such as in Barcelona or Madrid, the municipal council may have more councillors than in Parliaments of some *Comunidades Autonomas.*

- Participation in educational planning, creation, construction and maintenance of public educational facilities, participation in the managerial bodies of those facilities and in the supervision of compulsory school attendance.

19. The state, the autonomous community and other local authorities may, while maintaining them under their direction and supervision, delegate to municipalities the exercise of functions in matters affecting their own interests (Section 27). According to sections 36 and 37, provinces and, where appropriate, districts (*comarcas* – established in some autonomous communities) exercise the functions conferred to them by state or regional legislation and perform a supplementary or support function in relation to municipalities. Municipalities have statutory powers to make regulations, levy taxes, adopt their budgets, draw up plans and programmes, and make use of expropriation. They have their own staff.

20. They can manage local public services either directly or indirectly. Direct management is allowed only where services involve the exercise of authority. Indirect management means bringing a private entity into play: a concession, an incentive management scheme, a *concierto* (contract used in the educational and social spheres), a lease or a semi-public corporation (Law 7/1985, Article 85).

Provinces

21. As mentioned in Article 141(1) of the Constitution "The province is a local entity, with its own legal personality, determined by the grouping of municipalities and by territorial division, in order to carry out the activities of the State. Any alteration of the provincial boundaries must be approved by the *Cortes generales* by means of an organic law." The province has a deep tradition in Spanish constitutionalism since 1812, which has remained in force (with slight variations) in the Constitution of 1978.

22. In terms of competences and institutions of government, these vary greatly among communities. In all communities composed of more than one province, the latter are governed by "provincial deputations" (*diputaciones provinciales*), with a limited scope of administrative competences.

Autonomous communities, their capital cities and provinces

Autonomous community	Capital	Provinces
Andalusia	Seville	Almería, Cádiz, Cordova, Granada, Huelva, Jaén, Málaga and Seville
Aragon	Zaragoza	Huesca, Teruel and Zaragoza
Asturias	Oviedo	Asturias
Balearic Islands	Palma	Balearic Islands
Basque Country	Vitoria-Gasteiz	Álava, Gipuzkoa and Biscay
Canary Islands	Las Palmas and Santa Cruz de Tenerife	Santa Cruz de Tenerife and Las Palmas
Cantabria	Santander	Cantabria
Castile-La Mancha	Toledo	Albacete, Ciudad Real, Cuenca, Guadalajara and Toledo
Castile and León	Valladolid	Ávila, Burgos, León, Palencia, Salamanca, Segovia, Soria, Valladolid and Zamora
Catalonia	Barcelona	Barcelona, Girona, Lleida and Tarragona
Community of Madrid	Madrid	Madrid
Extremadura	Mérida	Badajoz and Cáceres
Galicia	Santiago de Compostela	A Coruña, Lugo, Ourense and Pontevedra
La Rioja	Logroño	La Rioja
Murcia	Murcia	Murcia
Navarre	Pamplona	Navarre
Valencian Community	Valencia	Alicante, Castellón and Valencia

23. The Provincial Council consists of the following:

- A plenary council, composed of the President and deputies (according to the population);
- An administrative committee composed of the President and a number of deputies which shall not exceed one third of the total number.

24. The President of the provincial council (assisted by vice presidents and the administrative committee) is elected by the deputies from amongst members of the council. The provincial deputies are elected by the municipal councillors (*consejales*) in the *comarcas* constituencies.

25. The attributions of the plenary provincial council are mentioned in Article 33(2) of Law 7/1985 and in Article 35(2) for the administrative committee. The attributions of the President of the provincial council are listed in Article 34(1) of the above mentioned law.

26. Provinces and islands *(islas, consejos insulares y cabildos)* form the "second tier" of local government.

27. According to Article 36(1) of Law 7/1985, the provinces' competences are the following:

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

28. At State level, the National Association of Municipalities and Provinces (FEMP – *Federación española de municipios y provincias*) comprises 7 287 entities[13] (town councils provincial councils, island councils and inter-island councils) and aims at encouraging and protecting the autonomy of local entities by representing and defending their interests before the two other levels of government. In addition, there are associations of municipalities operating at regional level in all Autonomous communities. These regional associations can agree with the government of the Autonomous Community on the form of cooperation between the regional FEMP and the autonomous communities. In Galicia, for example there is a joint committee composed of an equal number of representatives of the municipalities and the Autonomous Community. It discusses the objective criteria to be used for the subsidies granted to municipalities by the *Fondo Gallego of Local Cooperation*. All Autonomous Communities have laws which determine the objective criteria for granting subsidies to municipalities (for example, municipalities which have less fiscal capacity, receive more). It is interesting to add that, for the first time, there has been an institutional recognition of the FEMP in Article 59, paragraph 5 of the Statute of the Autonomy of Extremadura, after the reform of 2011.

29. Some interlocutors met by the rapporteurs during the visit expressed their wish that the mechanisms of cooperation between autonomous communities and the regional Associations of FEMP should be improved.

Other special organisational models of local government bodies

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

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

- They are not explicitly mentioned by the Constitution;
- They do not enjoy the institutional guarantee that protects municipalities, provinces and islands, namely their name and legal status may be entirely regulated by the regions. State

[13] Source : FEMP website

legislation and the regional legislature may decide at any moment to create or to terminate those types of bodies.

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

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

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

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

36. *Local government in "large cities":* In 2003, the 7/85 Law was amended (Act of 16 December 2003) in order to introduce specific provisions for some cities, which are referred as "large cities" (*grandes ciudades).* This special status is an optional one, and can be voluntarily attained by large municipalities complying with certain requisites (for instance, if they have more than 250 000 inhabitants). Apart from having, as in the general system, a mayor and a local council, "large cities" present specific organisational features.[14]

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

Autonomous communities

38. In Spain there are 17 autonomous communities and 2 autonomous municipalities (Ceuta and Melilla)[15] which have more limited competences than autonomous communities, but more competences than other municipalities. The autonomous communities form the "third tier" of Spain's government system.

[14] Angel Manuel Moreno Molina, Local Government in the member states of the European Union: a comparative legal perspective, INAP, Madrid, 2012, " Local Government in Spain ", page 615

[15] These two municipalities each hold a special individual Autonomy Status, approved on 13 March 1995 by Organic Laws 1/95 and 2/95 respectively, which established a specific institutional system (Assembly, President and Governing Council), their responsibilities and their own economic and financial structure. They are municipalities in the true sense, but their organisation and powers are akin to those of an Autonomous Community.

39. Some Autonomous Communities are composed of a single province namely Navarra, Madrid, La Rioja, Murcia, Asturias, Cantabria, Balearic Islands.

40. All autonomous communities have: :

- a legislative assembly, whose members are elected by universal suffrage according to a system of proportional representation, in which all areas that integrate the territory are fairly represented;
- a council of government, with executive and administrative powers, headed by a president, elected by the Legislative Assembly – usually the leader of the party or coalition with a majority in the Assembly – and nominated by the King of Spain.

41. A large majority of Spanish communities have adopted on a set of electoral laws, within the framework of the national legislation. Despite minor differences, all communities use proportional representation following the D'Hondt method. All members of regional parliaments are elected for four-year terms. The president of the community enjoys the right to dissolve the legislature and call for early elections. Nevertheless, all communities, with the exception of the Basque Country, Catalonia, Galicia, Aragon, Castile and León, Extremadura, Baleares and Andalusia, hold elections on the last Sunday of May every four years, concurrently with municipal elections in the whole of Spain.

42. The structure of the autonomous communities is determined both by the devolution allowed by the Constitution and the competences assumed in their respective Statutes of Autonomy. The Statute of Autonomy is the basic institutional law of the autonomous community or city, recognised by the Spanish Constitution in Article 147. It is approved by a parliamentary assembly representing the community, and then approved by the Spanish Parliament (*Cortes Generales*), through an "Organic Law", requiring the favourable vote of the absolute majority of the Congress of Deputies. The Statutes of Autonomy must contain, at the very least, the name of the community, its territorial limits, the names, organisation and seat of the institutions of government, the competences they assume and the principles for their bilingual policy, if applicable.

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

The special status of Madrid

44. According to the explanatory note of the Act on Capital Status and Special Regime of Madrid, No. 22/2006, of 4 July 2006, Madrid has been the capital of Spain since May 1561.

45. Madrid is also the Capital of Autonomous Community of Madrid which comprises 179 municipalities in more than 800 localities. The Madrid Community was created by the Institutional Act (*Ley Orgánica*) 3/1983, of 25 February 1983, adopting Madrid's Statute of Autonomy (*Estatuto de Autonomía*).

46. The Spanish Constitution of 1978 states in Article 5: *"The capital of the State is the city of Madrid."* The peculiar features of Madrid, being not only the capital of the country but above all the most populated and prominent city in Spain, have justified for years a special legal regime, and this has been extensively discussed. Section 6 of the Madrid Regional Statute in fact provides that as a result of its dual status as capital of the State and seat of general institutions, the city of Madrid shall have a special regime, regulated by Act of Parliament, which shall determine relations between the State and regional and municipal institutions in exercise of their respective powers and functions. In 2006, after several political attempts, a specific regime was eventually approved by means of a statute, passed by the national Parliament: Act 22/2006, of 4 July 2006. Within the scope of an institutional framework, the aforementioned legislation lays down specific provisions for Madrid and specifies the administrative structure, powers and competences of the mayor etc. This Act also develops the provisions laid down in this respect by both the Constitution and the Statute of Autonomy of the Madrid Region. It is important to specify that this Act does not contain the entire legal regime governing the city of Madrid. It contains solely special rules which will apply in priority to those laid down by general

legislation. Furthermore the special rules under this Act do not question the exercise of the legislative powers of the Madrid Region (*Comunidad de Madrid*) in relation to local government.

47. The preamble of the 22/2006 Act directly refers to the provisions of the European Charter of Local Self-Government as regarding own powers and functions that are exercised under a system of autonomy under own responsibility, always subject to due coordination in their programming and implementation with other public administrations.

48. Barcelona, the second largest city in the kingdom also enjoys specific institutional and organisational features, laid down in Act 22/1998, of 29 December 1998, of the municipal charter of Barcelona, Act 1/2006 from 13 March on Barcelona specific regime, and Act 31/2010, of 3 August 2010, concerning the metropolitan area of Barcelona.

49. The population of the Autonomous community of Madrid was, in December 2012, 6 498 560 habitants.[16] 50.1% of the population[17] live in the City of Madrid. The population is distributed unevenly across the territory of Madrid, being mainly concentrated in the metropolitan area. 16.72 % of the population of the Community are aliens, making Madrid the Autonomous Community with the second biggest non-Spanish population after Catalonia.

50. The Municipality of Madrid covers 604.3 km^2, with a population of 3 249 000 habitants. According to Article 2 of the 22/2006 Act, the City of Madrid should have autonomy to manage its interests, with sufficient economic-financial resources, in accordance with the Constitution, the Statute of Autonomy of the Madrid Region, and other legislation. Independent municipal management shall be carried out with institutional loyalty and in collaboration, co-operation and co-ordination with the General State Administration and the Administration of the Madrid Region.

51. The City of Madrid is split up into 21 administrative districts, which are sub-divided into 128 neighbourhoods (*barrios*) governed by the *Juntas Municipales*. The districts lack legal personality.

52. Madrid has not only the same competences as all the other Spanish municipalities, but also specific competences as set out in Section III of the Law of 4 July 2006 on Madrid Capital and its special regime namely assigns the municipality of Madrid, in addition to the competences exercised by all municipalities and the largest municipalities,[18] a special mission regarding public and road safety, as well as infrastructure management.

53. The municipality of Madrid exercises some of its competences through the intermediary of public establishments (e.g. the employment agency and the economic development agency), semi-public companies (e.g. funeral directors) and private companies (e.g. limited liability companies for housing, transport and the development of Madrid).

54. The districts exercise competences delegated to them by the municipality, particularly in the following fields: security, transport, road infrastructures, social, cultural and sports services, and building permits.

55. Madrid, like all municipalities with a population of over 250 000, now has institutions which are described as “quasi-parliamentary”, given the clear separation of the respective functions of the deliberative Plenary (*Pleno*), the Mayor, a Governing Council (*Junta de gobierno*), the deputy Mayors, Town councillors, unelected members of the Governing Council and those determined in the corresponding organic statute.

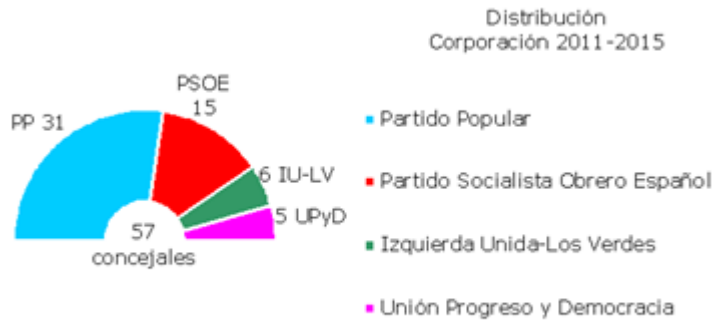
56. The Plenary members are elected by universal suffrage for four years. They elect the Mayor, who freely appoints the members of the executive.

[16] Source : “Boletin Oficial del Estado”, 29 December 2012

[17] Source: DG Estadística del Ayuntamiento de Madrid (City of Madrid, 2012), INE

[18] These competences are defined by the 1985 Law setting out the basic rules applicable to local authorities. This text has been amended on several occasions, particularly by the Law of 16 December 2003 on the modernisation of the administration of local authorities. The latter text laid down special provisions on the largest municipalities, especially those with over 250 000 inhabitants.

57. Madrid Municipal Plenary currently comprises 57 seats distributed among political parties as follows, while the Executive has eight members, including the Mayor. None of the members of the Municipal Executive is a member of the Government of the Autonomous Community.



58. The Municipal Governing Council approves municipal decrees, adopts the budget and supervises the work of the Executive. It can also debate strategic issues.

59. The Executive of the municipality of Madrid (Madrid Governing Board) exercises all the competences devolved to the municipality which are not specifically assigned to any of its other bodies. The Mayor leads the Executive and the administration. He/she represents the municipality and is accountable to the Municipal Council for its management.

60. The 21 districts, which are sub-divisions of the municipality, lack legal personality. According to Article 22 of Law No. 22/2006, they must guarantee the participation of the population in managing the municipality. To that end they are administered by joint assemblies comprising members of the Municipal Governing Council and non-elected citizens, and are presided over by a Municipal Councillor appointed by the Mayor. These assemblies must reflect the composition of the Municipal Council.

61. The Gross Domestic Product (GDP) of the City of Madrid for 2011 is estimated at 124.780.000 euros, which represents 65.9% of the total of the Autonomous community of Madrid and 11.6% of Spain.[19]

62. Some one-third of the municipality's receipts come from partial State repayments of certain national taxes, including income tax, and approximately the same proportion from direct taxes levied by the municipality. The balance derives primarily from charges made for services.

63. Although the municipal authorities would like to obtain specific resources to offset the costs arising from Madrid's status as national capital, the 2006 Law does not lay down any specific system of financing for Madrid. The Rapporteurs were informed after the visit that there are opinions regarding the special Act of Madrid, to the fact that it is more "window dressing" than a substantive change conferring true special status to the city.

64. Together the districts manage over 10% of the municipal budget, but they do not enjoy financial autonomy.

65. Decisions taken by the Municipality of Madrid, like those of all other municipalities, are subject to a review of legality by the Autonomous Community.

66. The relationship between the municipality of Madrid and the Autonomous community of Madrid is characterised by the particular nature of the two entities. Being a mono-provincial autonomous community with a distribution of population that sees more than half of the region's inhabitants live in the city of Madrid itself, a possible competition in terms of taking up competences is apparent. The interrelation becomes even clearer, if one bears in mind that the autonomous community absorbed the province of Madrid upon its creation in 1983. Particularly in metropolitan areas, an effective cooperation between administrative levels is a key to collective efforts and good governance. Particularly in the light of the challenges the metropolitan area faces due to the economic crisis, a

[19] *Observatorio Economico 2012, Ayuntamiento de Madrid*

further fruitful collaboration between the Autonomous community of Madrid and the Madrid city council and the municipalities of the metropolitan area is of high importance and accordingly to be encouraged. It is important to underline that an initiative has recently been launched, by the local governments, and their representative organisations to study the issue of overlapping competences between the Municipality of Madrid and the Autonomous community of Madrid. The Assembly of Autonomous community of Madrid *(Asamblea de Madrid)*, in its special session on 12 July 2011, approved the agreement creating the "Study on duplicate powers between municipalities and Madrid to improve efficiency in the delivery of public services". This is an "ad-hoc" Commission, which held its inaugural meeting on 19 July 2011. In May 2012, was approved the Opinion of this Commission which should help to improve the efficiency of Madrid government. As it was told to rapporteurs after the monitoring visit, the Assembly of Autonomous community of Madrid passed a new law on 28 December 2012 with regulations to remove them. According to those provisions, a bilateral commission starts its work on 30 January 2013.

2.2. Spanish model (level) of Charter reception

67. The Charter enjoys a good level of incorporation into the Spanish legal system, as it is directly applicable, albeit with some specificities.

68. In the field of international treaties, Spain is a country with a monist tradition. The Charter therefore, following the deposit of instrument of ratification became "the law of the land" under Section 93 of the Constitution. The Charter has been ratified and received into the country's domestic legal system. At the time of the ratification of the Charter, Spain made only one declaration which states that it does not consider itself bound by Article 3 paragraph 2 of the Charter, which declares that the system of direct election should be implemented in all local authorities falling within the scope of the Charter. This declaration reflected Spain's view that the direct election principle should not be extended to the councils of the Provinces (*diputaciones*), whose members are not elected directly by the voters, but are elected in an indirect way.

69. The Spanish Constitution of 1978 explicitly recognises local self-government (*autonomía local*) but does not provide a definition of it. Section 137[20] identifies the basic local government units that are present in the country and recognises them as constituent parts of the State. Section 140[21] lays down the constitutional principles for the municipalities and Section 141[22] for provinces. Finally, local finances are dealt with by Section 142.[23]

70. It is important to mention, that the case-law of the Supreme Court and, especially of the Constitutional Court is an essential element of Spanish local government law. As the Constitution merely states general formulae as regards local autonomy (without a definition of it), the Constitutional Court is the ultimate recipient of the idea of local autonomy.[24] The Charter's provisions take

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[20] Section 137: "*The State is territorially organized into municipalities, provinces and the Self-governing Communities that may be constituted. All these bodies shall enjoy self-government for the management of their respective interests*"

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

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

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

[24] – Ruling ("STC") 4/1981, of 2 February 1981: local autonomy is a general principle of the territorial organisation of the state. This implies, among other elements, the right of the local government units to participate in the governance and decision making on matters that affect the local citizens. The organs of the said units must have powers and competences. On the contrary, the legislator (either national or regional) cannot minimise or reduce this autonomous domain of decision making below a recognisable level.
– Ruling 35/1982, of 14 June 1982: local government autonomy is construed as the capacity of local bodies to formulate their own public policies.
– STC 240/2006, of 20 July: Local self-government is identified as a guarantee, involving a constitutional protection of the minimum content of local decision making.

precedence over domestic standards, on the basis of clauses establishing the precedence of international treaties, without formal assignment of the status of a higher-ranking source of law. In Spain, only the Constitutional Court can eliminate a provision of domestic law that conflicts with the Constitution (as interpreted in the light of the Charter). As confirmed by the written answer delivered by the Constitutional Court to the Congress delegation, in this way the Charter is a direct source of Spanish law, but its prevalence over domestic legislation comes not directly but only through a Constitutional Court ruling.

2.3. The decentralised Spanish system in the period 2003-2011

71. The Spanish government system is one of the most decentralised in Europe. But, the decentralization process has not been free from tensions. One source of conflict has been the different conceptions about autonomy held by the historical nationalities and the central government.

72. Since the last monitoring visit the Congress delegation highlighted the proposal of application of the so called "*Pacto local*",[25] a road map of reforms of the Spanish decentralised administrative system based on a redefined roadmap, adopted by the two main political parties of Spain (PP and PSOE).

73. Unfortunately, due to the stalling of the reform process, the only significant change during this time has been the initiative of several *comunidades autónomas* to modify the provisions of their respective Statutes, in order to reinforce the guarantee of the extent of legislative and administrative responsibilities. The following reforms of the Statutes of Autonomy had been approved[26]: 10 April 2006: Valencia Region; 19 July 2006: Cataluña; 28 February 2007: Balearic Islands; 19 March 2007: Andalusia; 20 April 2007: Aragon; 30 November 2007: Castile and León; 27 October 2010, the reform of the Organic Law 13/1982 as regarding the Integration and Improvement of the Regional Government of Navarra; 28 January 2011: Extremadura.

74. This modification of statutes proved to be largely unsuccessful. In particular the Statute of Catalonia, approved by the Catalan Parliament in September 2005, approved by organic law No. 6/2006 (after the approval of the *Congreso* and the referendum held in June 2006), has been contested by the Popular Party (*Partido popular*) with an appeal to the Constitutional Court, which gave a ruling four years later by Decision No. 21/2010. The effect of this decision was the impossibility for a autonomous communities Statute to interpret the Constitution and consequently the extent of the matters within State competence. The changes in the apportionment of powers between autonomous communities and the State are proposed by the autonomous community and approved by the National Parliament by an Organic Law. Only a largely shared revision of the Constitution could alter the present situation.

2.4. The decentralised Spanish system in the financial crisis

75. In the current climate of financial difficulties the State is taking a more decisive role in coordinating regional financial and economic policies. The recentralisation trend did not encounter strong resistance from the intra-national authorities for various reasons and circumstances related to economic situation of the autonomous communities. The fact that the political majority is the same at both national and autonomous communities' level means that particular attention is being paid to this issue of new governance.

76. For several years, the financial crisis has had an impact on all governmental levels in Spain, posing a threat to the stability of public treasuries. With a joint budget of 175 000 million euros and a debt amounting to 10% of the GDP (115 000 million euros), the 17 autonomous communities currently

[25] The "*pacto local*" is a set of initiatives, reflections, negotiations and political and institutional arrangements on the role of local authorities in the country as a whole and the development of local autonomy as enshrined in the Constitution. This is an initiative which involved the central government, political parties and local authorities (notably the mayors of the largest cities as well as the Spanish Federation of Municipalities and Provinces and other associations of local authorities). The process officially began on 4 June 1997, when the Minister of Public Administration presented a discussion document, including a code of conduct policy for local elected officials and proposals to transfer additional powers to municipalities from the central government. There followed a complex series of negotiations between the government, political parties and the FEMP. On 7 July 1998, the parties signed an agreement to end the phenomenon of municipal councillors switching parties. The political process resulted in the adoption of several laws that have changed many aspects of local government including Spanish Organic Law 7/1999, amending the Organic Law 2/1979 of 3 October on the Constitutional Court, which allows municipalities to petition the Constitutional Court directly to defend local autonomy.

[26] http://www.seap.minhap.es/es/areas/politica_autonomica/Estatutos_Autonomia/Estatutos_reformas.html

dispose of over 1.8 million public servants, whose salaries amount to 60 000 million euros in their annual expenditure.[27]

77. The present situation of the national budget and the necessity for a policy of extreme budgetary control does not only derive (as in other countries like Italy or Greece) from an increase in the total amount of Spain's public debt (all levels of government included), but also from a specific source: the crisis in the real-estate sector. The total private debt has almost doubled from 2000 to 2010, while the total public debt, after a continuous decrease from 2000 to 2006, began a sharp increase in the following years: from less than 40% (35.5%) of GDP in 2007 to 76.9% of GDP in 2012. The increase in public debt was largely determined by the bailout of the private and public banking system, in acute cash-flow difficulties, again due to the real-estate crisis (the banks, instead of receiving payment of the mortgage, became owners of buildings with sharply reduced value). The contribution to the total public debt is: 58.3% coming from central administration (well up from 26.8% in 2007); 14.2% from the autonomous communities (only 5.9% in 2007); 3.4% from local authorities. Some interlocutors told the Rapporteurs that 50 % of the public debt of local authorities belongs to provincial capitals.

78. The FEDEA (Applied Economic Research Foundation) 2012 report[28] pointed out that the autonomous communities "were responsible for two-thirds of the overall budgetary slippage", with the country showing a public deficit of 8.51% of GDP at the end of 2011, far above the target of 6%. According to their estimates), the 17 autonomous communities carry the risk of failing again to meet their deficit objectives in 2012, thus jeopardising the target set by Spain (5.3% of the GDP).

79. The Government which came to power in December 2011 has set an unprecedented austerity course, promising to attain a deficit of 5.3% in 2012 and then 3% in 2013. It has recently tightened its control over the autonomous communities, demanding that they submit fiscal consolidation plans, failing which their budgets will be directly taken over by the central Government. This followed on from a deficit of 2.94% at the end of 2011 (instead of 1.3%), which largely explains why Spain missed the deficit goal agreed with the EU by almost three points. In 2012, the Central Government set up a Regional Cash-Flow Fund (*Fondo de liquidez autonómico*) to provide urgent financial assistance to those regions facing serious cash-flow problems.

80. At the end of June 2012, the Spanish Government announced that the autonomous communities had managed to balance their budgets for the first quarter, so that they could now envisage respecting the objective of a deficit of 1.5% of GDP in 2012.

81. Regularly taken to task by the rating agencies and international observers, the autonomous communities account for some 35% of overall public expenditure in Spain. The commitment to reducing the deficit is being closely monitored, while at the same time the Eurozone has promised Spain an aid of 100 billion euros maximum for its banks, before a possible more comprehensive bailout of its economy.

82. Given current yield rates, these territorial authorities are virtually deprived of access to the money markets. In 2012, they had both to re-finance some 36 billion euros in debts which fell due and find 15 billion euros to finance their deficits.

83. The fall in value of real estate, together with a drastic decline in sales, has resulted in a sharp decrease in public revenue, particularly at regional and local level (at territorial level, the bulk of taxation is based on revenues derived from property). The severe cash flow problems for regional and local authorities are compounded by the obligation for the national government to control the general budgetary situation of the country more rigidly, which entails a drastic reduction in transfers of public resources from the centre to the periphery. It would be appropriate to point out that the amount of transfers within the system, including local funding, depends on the rate of evolution of state tax revenues. Any trend in the economy (cyclical or structural) that affects state tax revenues (income tax, VAT and excise duties on alcohol manufacturing, petrol and tobacco) will also affect the local financing system.

84. To bring public debt under control and avoid the risk of asking for a European bailout, the Popular Party government, by adopting the Organic Law on Budgetary Stability and Financial Sustainability of Public Administrations (*Ley de estabilidad presupuestaria y de sostenibilidad financiera*) in 2012, took

[27] The newspaper " El Economista " 2012, " El destino del dinero público

[28] 2012 Report : « La crisis de la economía española. Análisis económico de la gran recesión ».

a series of measures consisting either of reductions of transfers of public resources or of strengthening the capacity of public administrations to control their own expenses. This, and other interventions for the control of public expenditure, has been accompanied by a series of proposals, not yet transposed into acts approved by the Parliament or into bills presented to it, aimed at introducing more radical measures of a global reorganisation of the whole administrative system - measures which would assure a structural reduction of public expenditure and a reduction of public debt to 60% of the GDP by 2020. Considering the Stability Pact mentioned above, tasks cannot be transferred to municipalities without providing the necessary funding to finance them. Many of the difficulties suffered by local Spanish authorities arise from having accepted the transfer of powers in the past, without the accompanying and adequate financial resources; but they are also due, in part, to the fact that municipalities (by themselves) decided to provide higher quality public service to their citizens, which implies higher costs.

85. The Parliament of Andalusia informed the Rapporteurs that regional authorities guarantee funding for local authorities by Law 6/2010 of 11 June. This law, which regulates the participation of local entities in the tax revenues of the Autonomous community of Andalusia, makes provision for the creation of a participation fund (Equalisation Fund). The municipalities of Andalusia are classified into four groups according to their population, and an allocation is made to each group following a detailed formula contained in the Act. With regard to the endowment fund, this law provides the phasing of funds, i.e. a global and initial endowment to be made in 2011 and the addition of funds annually for subsequent years. Apart from this funding, each municipality has an unconditional funding, i.e. not determined by the region but set by law and one that each local government can earmark as it deems appropriate in the exercise of their autonomy.

86. According to a recent review of the supplier payment plan by the Ministry of Finance and Public Administration, a total of 3 777 local authorities have signed up to the extraordinary mechanism for the payment of outstanding debts, and submitted a total of 1 796 696 invoices pending payment, for a total value of 9 598 million euros.

87. The Rapporteurs' attention was drawn also to two major problems which affect the Spanish system at all levels: (1) on the one hand, political corruption which causes growing public concern, as the mass media unveil every day new cases of corrupt mayors or vice-mayors (awarding of contracts, recruitment of public employees, bad budgeting practices, illegal accounting, etc.); (2) on the other hand, some regions and local governments have had irrational spending policies: construction of "pharaonic" projects, such as the airports built by the Province of Castellón and the city council of Ciudad Real (now closed); huge pays and salaries for some local and regional politicians (much higher than those in central government); social assistance programmes that turned out to be financially unsustainable; extravagant "international relations" agenda, etc. Members of the Parliament of Andalusia has demanded that national authorities reinforce, by law, the transparency indicators for local communities, namely as regards the management of public finances, urban planning, local heritage, publication of municipal contracts, municipal statistics, etc.

3. FULFILMENT OF OBLIGATIONS DERIVING FROM THE CHARTER

3.1. Analysis of the situation of local democracy in light of the European Charter on Local Self-Government on an article by article basis.

This analysis is based on the last recommendation.

3.1.1. Article 3: Concept of local self-government

Article 3 – Concept of local self-government	
1	Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2	This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

88. The Spanish Constitution of 1978 explicitly recognises local self-government (*autonomía local*) but does not provide a definition of it. Section 137[29] identifies the basic local government units that are present in the country and recognises them as constituent parts of the State. The concept of "local autonomy" in Spain is difficult to summarise in a precise and detailed legal way. But different legal instruments are relevant: (a) the European Charter of Local Self Government (b) the Spanish Constitution; (c) the laws and regulations approved by the national and regional Parliaments and executives; (d) the case-law of the Spanish Constitutional Court; (e) the case-law of the Supreme Court. It is important to mention that the case-law of the Supreme Court and, especially, that of the Constitutional Court is an essential element of Spanish local government law. As the Constitution merely states general formulae as regards local autonomy one can perfectly support the proposition that the Constitutional Court is the ultimate recipient of the idea of local autonomy. Since 1981, the Court has issued key rulings in the field, and has built the actual constitutional concept of local autonomy.

89. The delegation is aware of the fact that Spain made only one declaration upon ratification of the Charter by stating that it does not consider itself bound by Article 3, paragraph 2 of the Charter, which declares that the system of direct election should be implemented in all local authorities falling within the scope of the Charter. This declaration reflected Spain's view that the direct election principle should not be extended to the Provincial Councils (*diputaciones*), whose members are not directly elected by the voters.

90. The *diputaciones*, though a separate level of government, do indeed possess a distinct legal personality, and actually fulfil only responsibilities established by the law (at national and regional levels) assigned to the municipal level. In a way, the second tier system is justified by the fact that the *diputaciones* are not a direct expression of a territory's population, but of its municipalities. Later on, further transformation of the legislation on *diputaciones* might be considered as a means of reorganising local government in order to cope with the financial crisis.

91. This being said and contrary to the prevailing situation in other Spanish autonomous communities, the parliaments of the provinces of the Basque Country are elected by a direct universal suffrage system. These parliaments, called *juntas generales* correspond to the three provinces of the Basque Country, namely: Álava, Vizcaya and Guipúzcoa

92. The rapporteurs will not comment on the compliance with Article 3.2 in this respect, since it was the subject to a reservation formulated by Spain when it ratified the Charter.

3.1.2. Article 4: Scope of local self-government

Article 4 – Scope of local self-government

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

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

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

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

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

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

93. Local self-government has been guaranteed by the Spanish Constitution. This guarantee protects both municipalities and provinces (Art.137), which are defined as local government formed by grouping municipalities and operating the territorial divisions required for the performance of state

[29] Section 137: "*The State is territorially organized into municipalities, provinces and the Self-governing Communities that may be constituted. All these bodies shall enjoy self-government for the management of their respective interests*".

functions. The autonomous communities may set up other groupings of municipalities, and municipalities are entitled to form associations.

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

95. During the visit, the delegation was informed that neither the legislator nor the government have provided a mechanism to overcome the imbalance caused by the exercise of certain competences by local governments, which have traditionally intervened in a number of areas due to their proximity to the citizens and in response to their direct demands. These "*competencias improprias"* are not regulated by legislation and the provision of services that results from these competences is not fairly compensated; no economic resources are made available for their implementation. They concern personal services and physical environment services.

96. The present government has applied the slogan "one competence, one administration"[30] to the first policy to reduce public expenditure, meaning that Spanish legislation must be modified not only according to the subsidiarity principle but also the "uniqueness" principle. Avoidance of a series of overlaps of remits with corresponding ones comprising different activities and distributed among different levels of government, is considered to be a crucial means to save public resources.

97. Under this policy, attention is now focused on the so-called "*competencias improprias*". For many years, many *municipios* took on new powers not explicitly provided for by law (but nonetheless hitherto assumed to comply with *Ley de base del regimen local*: Article 2, the principle of the "right of intervention in every field concerning the circle of their own interests"), in order to meet the new needs of their citizens, or to fulfil *de facto* competencies delegated to the *municipios* on an *ad hoc* basis by the autonomous community (i.e. with an initial transfer of financial resources not confirmed in the following years).

98. The new proposed legislation aims at eliminating or at least greatly reducing this phenomenon. It will provide for a strict list of responsibilities classified either as "held in own right" *competencias proprias* or "delegated" (*atribuidas por delegaciòn*). The financial system will be assessed in order to guarantee these two kinds of responsibilities. That does not prevent the *municipios* from assuming responsibilities outside the list, but subject to two specific conditions: 1) when responsibilities held "in their own right" are sufficiently guaranteed; 2) when the assumption of a "non-standard" responsibility is in line with the constraints of the legislation on budgetary stability and financial sustainability of the *municipio* concerned.

99. In the current debate regarding structural reorganisation in Spain, political entities have expressed concern regarding on the one hand the issue of "*competencias improprias*" and on the other hand the overlap of competences. According to the 2012 report of the "Foundation on Progress and Democracy", the overlap of competences in the public sector lead to an aggravated loss of 32 300 million euros per year, of which 26 108 million euros are to be covered by the autonomous communities and 6 211 million euros by local authorities. As concerns the problem of overlapping competences, considerable initiatives have been launched, at national, regional and local level.

100. Central government initiatives: Proposed by the Third Deputy Prime Minister and Minister of Territorial Policy and Public Administration, and adopted by the Council of Ministers on 4 March 2011, the "Resolution approving the programs and public policies" will be evaluated by the Agency for the Evaluation of Public Policies and Quality of Services in 2011. The Agency was to make a report on the possible elimination of duplication, overlap and inefficiencies of the autonomous communities. From information received, that report has not been yet published. Another central government initiative concerns the creation in October 2012 of a commission to reform public administration.[31] Some of the aims of this Commission are to develop rationalisation measures, to eliminate administrative burden by simplifying rules and procedures and to avoid duplication. The Commission is attached to the Ministry of Finance and Public Administration, through the State Secretary of Public Administration (*Secretaría de Estado de Administraciones Públicas*).

[30] As announced by Prime Minister Mariano Rajoy in his inaugural speech: http://www.lamoncloa.gob.es/presidente/discursodeinvestidura_new/index.htm

[31] http://www.seap.minhap.gob.es/es/prensa/notas_de_prensa/notas/2012/10/20121026.html

101. Regional initiatives: The current economic crisis has spurred a number of initiatives in regional parliaments to improve local funding and to eliminate the overlap of competences, namely by reforming the statutes of the autonomous communities. Other examples include :

- Catalonia: Motion on the liquidity and the financing of local authorities, dated 10 May 2011. The Plenary Assembly of the Parliament of Catalonia, at its meeting on 5 May 2011, approved Motion 19/IX "on liquidity and funding of local authorities" presented by the Parliamentary Group of Left Republicans of Catalonia, with modifications from other groups;

- Andalusia: Local laws. As local elected official informed the Rapporteurs during the visit, the regional government of Andalusia was a pioneer in establishing the "Local Laws" (LAULA and PATRICA) for their municipalities. These laws defined municipal powers and gave the Andalusian municipalities the possibility to receive a greater amount of unconditioned national funds;

- Basque Country: Report on duplication and inefficiencies in Basque public administrations, from September 2011;

- Madrid: Study Commission on duplicate powers. The Assembly of the Autonomous community of Madrid, in its special session on 12 July 2011, approved the agreement creating the "Study on duplicate powers between municipalities and Madrid to improve efficiency in the delivery of public services". This is an “ad-hoc” Commission, which held its inaugural meeting on 19 July 2011. In May 2012, the Opinion published by this Commission was approved, which should help to improve the efficiency of Madrid government. The rapporteurs were informed after the monitoring visit that the Assembly of the Autonomous community of Madrid passed a new law on 28 December making provision to remove these duplicate powers. A bilateral commission was established to start work thereon in January 2013.

102. Local initiatives: Local governments, either through their representative organisations or individually, have launched initiatives to study the issue of overlapping competences. The resolution adopted by the Spanish Federation of Municipalities and Provinces by the 10th General Assembly of FEMP on 24 September 2011 can be cited as an example.

103. While the measures related to the economic situation are only temporary, it is very difficult to establish whether the restrictions will affect standards of exercise of public responsibilities or public services. Conversely, if the objective is structural and permanent to reduction, action is foreseeable regarding the standard costs of public functions and services.

104. These initiatives are not in opposition to the provision of the Charter, and have the merit of establishing more clarity in the distribution of responsibilities. Nevertheless this policy could result in a reduction of local authorities’ capacity to adapt local government to the changing needs of their populations and in a reduction of autonomy: the decision to assume a new responsibility as regards “*competencias improprias*” could be subject to financial oversight (at national or regional level) possibly resulting in a ban on fulfilling these responsibilities. That outcome could somehow conflict with Article 4, paragraph 2 of the Charter: “Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority”.

105. One further element of concern is raised by the financial requirements for *municipios* to continue exercising the responsibility concerning “*competencias improprias*”. These requirements, according to a political rather than technical evaluation, could create a distinction between “rich” and “poor” *municipios*, with the former more abled to assume new responsibilities and the latter confined to strict observance of the list of responsibilities in their own right, established by (national or regional) law.

106. The Rapporteurs well understand the difficult situation created by the financial crisis. They nevertheless suggest, for example, that the Spanish government and the legislator create a financial system that can fully guarantee (at national and regional level) every *municipio*’s complete financing for the fulfilment of its “own right” and “delegated” responsibilities (this is the target already set for the proposed reform) and, at the same time, create a system of equalisation in order to transfer resources from richer to poorer *municipios*, so that all are rendered equally capable (as far as possible) of assuming responsibilities other than the listed ones.

107. As regards subsidiarity (Article 4, paragraph 3 of the Charter), this principle is clearly upheld in national law as a guiding principle for state and regional legislation assigning powers to local authorities, but it is not reflected in the same way in the statutes of the *comunidades autónomas*. Here again, some innovations have been introduced by the general provisions of the new Statutes, most of which explicitly adopted the principle (see in particular Article 84, paragraph 3 of the Statute of Catalonia, which directly links the principle to the Charter), but we must wait for the effective implementation of the principle in ordinary autonomous communities legislation.

108. The subsidiarity principle, however, implies a clear preference for the attribution rather than the delegation of competences to the *municipios*. In this respect, the texts provided to the Rapporteurs contain a long list of possible competences that can be given over to the *municipios* by either national or autonomous communities legislation. These concern matters normally attributed, in other European countries, to the communal level as "own" competences. The Rapporteurs understand the present difficulties in finding new structural forms of financing a larger number of own competences, but could not forego underlining that a too large number of delegated competences should be in contrast with the Charter.

109. In terms of consultation with local and regional authorities (Article 4.6 of the Charter), while some sources have stated that the central government consults the local authorities, namely FEMP, in due time and in appropriate way in the planning and decision-making process for all matters which concern them directly, others have declared the opposite and stressed the need to improve such consultation. The problem is considered here in general terms; the more specific aspect concerning participation in financial matters will be considered later on (Article 9 of the Charter).

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

111. For example, Catalonia created (Article 85 of the Statute) a *Consejo de Gobiernos Locales*, as an organ representing *municipios* and *veguerias* (the only second tier of local government recognised by the Statute) in the legislative process and in taking decisions on regulations and acts of general planning. The *Consejo* has to be regulated by an ordinary law of the autonomous communities.

112. Andalusia has created two different bodies: one is the *Consejo Andaluz de Concertación Local* (Andalusian Council of Local Consultation), a joint body in which the *Junta de Andalucia* Government is represented on one side and local corporations, municipalities and *diputaciones* on the other. It is therefore a classic organ of consultation, agreement and participation of the Andalusian Government. The second body is the *Consejo Andaluz de Gobiernos Locales* (Andalusian Council of Local Governments), which, in the words of the President of the Parliament of Andalusia, is a very recent creation under Law 5/2010 of 11 June on "*Autonomía Local de Andalucía*", Article 57, not yet in operation and due to start work in the quarter that has just begun; it will participate in the parliamentary proceedings on all laws and all plans affecting local governments in the Parliament.

113. Article 4 is not fully respected, particularly with regard to the frequent delegation of competences to the *municipios*.

3.1.3. Article 5: Protection of local authority boundaries

Article 5 – Protection of local authority boundaries
Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

114. In general, according to the information provided to the rapporteurs, it seems that the situation is in compliance with Article 5 of the Charter. Local authorities appear to be formally consulted on projects of changes of local boundaries.

115. The issue of merging of municipalities with less than 5 000 inhabitants was widely discussed in 2012. Several national sources concluded that most of Spain's municipalities are administratively unviable, and considered their merger essential in any process aiming at strengthening local government. In the case of Spain, establishing a minimum population size of 5 000 inhabitants would represent a major step forward, bearing in mind that 6 797 municipalities (83.7%) of the municipalities

are currently below this threshold. The draft act on Rationalisation and Sustainability of Local Government[32] (*Ley de racionalisacion y sostenibilidad de la Administracion local*) stipulates that 3.725 local entities should be merged. The benefits to be gained from such a merger would be:

- to reduce administration costs, while guaranteeing the improved administrative capacity of the municipalities, approximate 3.500 million euros[33];
- to facilitate the reform of the local finance system, reducing the dependence of the municipalities on higher tiers of government and improving the fiscal responsibility of each municipality;
- to improve the efficiency of municipal investment policies, reducing the dependence of the small municipalities on higher tiers of government and avoiding the duplication of service provision;
- to facilitate municipal financial control (currently impeded by their size and sheer number) and the design of policies tailored to their needs (e.g. fiscal stimulus, aid in extreme financial situations, etc.).

116. Nevertheless, some interlocutors the Congress delegation met during the visit noted that it would be more appropriate to combine local self-government with flexible management and promote a rational distribution of competences, taking into account the economic needs of municipalities and of their citizens rather than opting for a simple "artificial fusion" of municipalities.

117. Should this measure be adopted[34] and implemented in the future, the rapporteurs are confident that a consultation process will be organised prior to the foreseen changes of local boundaries as stated in the Article 5 of the Charter. The reform would need to be accompanied by measures guaranteeing citizen participation (including those in the small, merged municipalities) and that they have the capacity to play a role in the decisions that affect them.

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

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

118. As part of their autonomy, local authorities have their own staff and the power to recruit and manage their own human resources. Title VII of Law 7/1985 ensures the legal basis of human resources at local level, as well as regional and sectorial law.

119. In Spain, local government staff may be of two different kinds: civil servants (*funcionarios*) and contractual employees (*personal laboral*). Civil servants are considered under "administrative law" and enjoy a special legal status (in principle, they cannot be fired or made redundant). The recruitment of this type of employee, their rights, services, duties and responsibilities are regulated by Administrative law. Contractual employees, on the other hand, are governed by "private" employment law. Their salaries and working conditions are regulated in a different way: they sign individual contracts; they bargain and negotiate collective agreements with the corresponding local authority (usually the big ones). In terms of personnel management, each local authority is supposed to work as an independent "company", with its own staff.

120. In this context, one has to bear in mind that, in Spain, there is a special type of local employee, who has traditionally been recruited and managed by the national government. These so-called "civil servants having a state qualification" or "state-wide qualified" employees (*funcionarios con habilitación de carácter estatal*) are the only ones who enjoy ''professional mobility'' across the Spanish territory. In other words, during their career, they may obtain positions within the administration of different local

[32] http://www.lamoncloa.gob.es/ConsejodeMinistros/Enlaces/130712-enlacesostenibilidad.htm

[33] Ibidem

[34] The delegation was informed that seven of the Autonomous Communities support the merger of municipalities, notably the Autonomous Communities of Madrid, Castile and León, Castile la Mancha, Extremadura, Cantabria, Aragon and the Basque Country. However, the government has included municipal mergers, the streamlining the number of local entities and their competences, in the 2012 National Reform Programme of the Kingdom of Spain.

authorities across the country, by participating in “ad hoc” staffing procedures. The status of this special type of civil servant is also regulated by the State (the essential rules and elements) and by the regions. Clearly, the role of such special civil servants is of high importance to each and every local authority, because they discharge (in an exclusive way) crucial legal and managerial functions. The situation of the human resources at local level seems to the rapporteurs to be respected by Spain.

3.1.5 Article 7: Conditions under which responsibilities at local level are exercised

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

121. In Spain there are currently almost 2.7 million public employees.[35] Half of these employees work for the regions. Almost 600 000 public employees work at local government level.

122. The Rapporteurs was informed that the salaries of locally elected officials vary enormously. According to the information provided by several interlocutors, the vast majority of mayors do not receive remuneration and there is a large gap between the respective wages of most mayors in Spain which receive remuneration.

123. In addition, the Rapporteurs were informed that there is no public register giving the details of the salaries of locally elected officials. In this respect, the FEMP approved in 2009, the Code of good local governance which includes some recommendations on the remuneration of elected officials.

124. According to various sources, the government intends to establish a framework for the remuneration of mayors in order to establish either a balance between salaries of mayors or a ceiling for the salaries of mayors. The Rapporteurs would suggest that a minimum threshold be established as well therefor.

125. Another important issue to be considered and to be followed in the current monitoring process is the Government Programme of Reforms/Second Half of 2012 to 13 July 2012. One of the objectives thereof is the reform of the Civil Service Employees and Public Offices, by adapting the civil service employee and public office regime to the economic reality, contributing thereby to budgetary stability and competitiveness. An exceptional measure in this Programme concerns the suspension of the extraordinary salary instalments given in December (or an equivalent reduction) for all civil servants. Civil servants will recover this amount after 2015 only, through contributions to their pension funds. There is a ceiling on salaries paid to mayors (and a 30% reduction in the number of local councillors (which means 21.338[36] *consejales*) to a maximum of 35 in the largest municipalities).

126. Austerity measures have also been imposed on the regional members of parliaments, namely through pay cuts (*dedicación exclusiva*) for deputies. The Government of Castile La Mancha, with a budget of 8,500 million euros and 133,000 public employees, is one of those which adopted the most drastic measures. From 1 January 2013 on, 42 out of 49 regional deputies of Castile-La Mancha will no longer receive the “*dedicación exclusive*”. In addition, most autonomous communities have decided to reduce the number of regional deputies. Representatives of the Socialist Group expressed their worries in this respect to the Rapporteurs, because they believe that these measures are not genuine austerity measures, but simply consist in a direct threat to regional democracy.

127. So far, it seems to the rapporteurs that the situation in this respect is not in compliance with the requirements laid in the Article 7 of the Charter.

128. As regards the plan to limit mayoral salaries and *dedicación exclusiva* of regional deputies, the Rapporteurs would draw the national authorities’ attention to the above mentioned provision of the

[35] *Boletin Estadistico del personal al servicio de las Administraciones Publicas* (July 2011).

[36] http://www.lamoncloa.gob.es/ConsejodeMinistros/Enlaces/130712-enlacesostenibilidad.htm

Charter, and specifically to the requirements which imply an appropriate financial compensation for expenses incurred in the exercise of the office as well as where appropriate, compensation for loss of earnings or remuneration for work done (Article 7(2) of the Charter).

3.1.6. Article 8: Administrative supervision of local authorities' activities

Article 8 – Administrative supervision of local authorities' activities	
1	Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
2	Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.
3	Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

129. According to Article 153 of the Spanish Constitution, "control over the bodies of Self-governing Communities shall be exercised by: a) The Constitutional Court, in matters pertaining to the constitutionality of their regulatory provisions having the force of law; b) The Government, after the handing down by the Council of State of its opinion, regarding the exercise of delegated functions referred to in Article 150.2; c) Jurisdictional bodies of administrative litigation with regard to autonomous administration and its regulations; d) The Court of Audit, with regard to economic and budgetary matters".

130. Furthermore, since 1984, some autonomous communities have set up, within the framework of their autonomous powers, regional bodies responsible for external auditing ("OCEX") answerable to their respective parliaments, and aim to develop external /auditing in their specific public sectors. So far, thirteen regions have established OCEX responsible for auditing the regional public accounts (Andalusia, Aragon, Asturias, Canaries, Castile-La Mancha, Castile and León, Catalonia, Community of Madrid, Community of Valencia, Galicia, the Balearic Islands, Navarre and the Basque Country). The situation of Spain is thus atypical when compared to other European countries, which have greater homogeneity among the different regions of the same State.

131. The auditing regime of local entities is enshrined in the Law 7/1985. The essential judicial supervision of local authorities is carried out by administrative courts (*jurisdicción contencioso-administrativa*). Furthermore, the national Court of Audit (*Tribunal de Cuentas*), reviews the legality and regularity of a local authority's expenditure, with reference to the relevant regulations on budgeting and accountancy. Should irregularities or misdeeds be established, mayors, deputy-mayors and others can be held responsible and may incur possible damages.

132. The supervision of autonomous communities and local entities consists of supervising financial regularity, monitoring legality and checking on efficacy, efficiency and economy (the "three E's").

133. In Spain, a system of inter-administrative oversight is performed jointly by the regions and the State. In a system comparable to other European countries, Spain has developed specific instruments, through which the region or the State are in a position to supervise, oversee or merely gather information concerning the conduct of local authorities. The designation of local authorities as "autonomous" in the Spanish Constitution does not mean that they are independent administrative entities, or that it excludes intervention from either the national or regional sphere. Indeed, the core supervisory function exercised by both levels is meant to be an oversight of the actual legality of local authorities' actions and not a control of expediency. Consequently, an administrative "tutelage", which is prevalent in countries such as Belgium or Luxembourg, is conceived to be incompatible with the Spanish concept of local autonomy.

134. The State and the region can thus neither adjust nor invalidate local authorities' plans, decisions or rules on expediency or opportunistic grounds as such an act would be incompatible with local autonomy. Accordingly, administrative supervision is primarily limited to questions of legality and secondly, submitted to the inquiry of administrative courts (which in practice, appears to be complex, as reflected in the vast amount of administrative jurisprudence).

135. Lastly, the Council of Ministers, being the top central government body, has the right to dissolve the governing body of a local authority, if the local body acts in violation of its constitutional duties (for

example in the case of the dissolution of the City Council of Marbella in 2006, which came about as a result of massive corruption in the field of land use and housing construction practices).

136. Specific attention must be paid to supervision in financial matters. In many countries, the targets established in order to adopt policies of general spending review in order to avoid increased public debt could imply some new instruments, which, even if they could not explicitly be considered as "supervision", could actually reduce the autonomy of local authorities.

137. The supervision of autonomous communities was reinforced on 1 May 2012 by the entry into force of the organic law (on budgetary stability) which enhances the transparency of the public accounts of autonomous communities and reinforces State resources in terms of monitoring and correcting lapses in regional accountancy, with possible sanctions or even compulsory supervision if necessary (in return for support with their cash flow difficulties). The rapporteurs consider this law as a positive step, especially in the current economic context.

138. In that perspective, it should be noted that the organic law primarily provides for a new system of supervising the regional and local authorities' budgeting process, in which regional governments submit their approved expenditure ceilings to the CPFF (Council of fiscal and financial policy), and, along with local authorities, send these budgetary provisions to the Ministry, which decides whether the budgets comply with the targets of stability, debt and expenditure regulation for the following year's budget and may make some possible recommendations to the administrations concerned.

139. Secondly, when one administration adopts measures that carry a risk of non-compliance, the central government adopts a measure to limit borrowing automatically, subject to a notification to the CPFF or CNAL (National Commission for local Administration).

140. Thirdly, the corrective mechanism is to be adopted by central government, always subject to a notification to the CPFF or CNAL.

141. The general provision of the present Spanish legislation on supervision by the upper levels of government on local authorities is in compliance with the Charter.

3.1.7. Article 9: Financial resources of local authorities

Article 9 – Financial resources of local authorities

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

2 Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.

3 Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.

4 The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.

5 The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.

6 Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.

7 As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.

8 For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

142. The domain of financial resources holds a place of high importance in Spanish legislation, as illustrated in Act 2/2004 and Section 142 of the Constitution, which specifically state that "Local treasuries must have sufficient funds available in order to perform the tasks assigned by law to the re-

spective Corporations, and shall mainly be financed by their own taxation as well as by their share of State taxes and those of Self-governing Communities".

143. The autonomous communities' funding system distinguishes two regimes. Due to their "historical rights", which are recognised by the Constitution, Navarra and the Basque Country have a special regime that gives them significant autonomy in financial and tax issues. All other autonomous communities fall under the general regime. They obtain their resources mainly from totally or partially devolved State taxes; their own taxes; transfers from the Inter-territorial Compensation Fund; returns from their own patrimony; and credit transactions. The Inter-territorial Compensation Fund was created to soften economic unbalances across the regions and to give effect to the principle of solidarity among autonomous communities.

144. Generally, local authorities decide and, consequently approve their respective budgets by an affirmative vote of the municipal council. Thus, annual budget decisions are taken without prior approval or intervention from regional or national authorities. Decisions regarding the expenditure of local authorities are also taken autonomously. Certain budgetary decisions, such as taking up loans above a given ceiling do, however, require the approval of a higher administrative authority.

145. Municipalities rely on their own specific taxes from which they can determine rate, a participation in State taxes, specific subsidies for public transport, the creation of infrastructures, services and equipment, public payment for activities under their own competence, and public or private credit. For their part, provinces do not have "taxes" but they may establish a surcharge (*recargo*) on the municipal tax on economic activities, and may collect charges and fees and special contributions in addition.

146. The own revenues (*recursos propios*) of local authorities comprise the total of fiscal incomes (taxes, charges and fees) and additional non-fiscal revenues. Contrary to municipalities, provinces can not levy taxes, but may merely establish surcharges (*recargos*) on the municipal tax on economic activities. In addition to that, provinces may collect fees, charges and special contributions. While municipalities may only collect taxes on basis of legislation enacted by the state or regional parliament, they are not in the position to freely create or establish such taxes (*impuestos*).

147. The Spanish Local Finances Act divides municipal taxes into mandatory and operational ones. The former comprises, among other, the tax on real estate, and the tax on motor vehicles and economic activities. Optional local taxes include the tax on real estate capital gains in urban areas as well as taxes on construction and installations.

148. Furthermore, local authorities are entitled to establish several charges or fees (*tasas, precios públicos*) for usage of municipal or provincial properties (sidewalks, square etc.) or the delivery of certain services such as the collection of waste, use of local sports facilities or depuration of residual waters etc. Ultimately, special contributions (*contribuciones especiales*) may be collected by the local authority in order to finance public works (renovation or improvement of sidewalks, streets etc.).

149. Other sources of own revenue can result from economic activities, the sale of property and assets or the collection of sanctions and fines.

150. Economic activities: Through public or local companies, local authorities may carry out economic activities which lead to an additional non-fiscal income.

151. Sanctions and fines: As in most European countries, Spanish municipalities enjoy the right to impose different administrative sanctions on natural and legal persons alike. A breach of local regulations and ordinances usually leads to the collection of monetary fines, which are particularly relevant in big cities (i.e. transit and parking fines, environmental fines etc.).

152. An additional key income for municipalities, which are located in areas that experienced a housing boom during the last decades, is generated by urban activities. In particular, cities located at the seaside and the urban conglomerations of Barcelona and Madrid profited from two major sources of income: Firstly, these municipalities have participated in the process of transformation of the rural land in to urban areas which has generated significant income from mandatory disbursements (either in land or money) that private property owners should make for such transformation. Secondly, the aforementioned building and development activities generated additional different sources of income by means of taxes, charges and fees. The explosion of the housing bubble in 2008-2009 instantly

stopped the fast development of the building sector and thus resulted in a drastic drop in income for municipalities.

153. One means used to reduce the amount of expenditure at local level is the establishment of limits at the central level, which consist largely of a comprehensive ceiling established for the total amount of expenditure. While such a measure, related to the economic situation, is only temporary, it is very difficult to establish whether the restrictions will affect standards in the exercise of public responsibilities or public services. Conversely, if the objective is structural and permanent reduction, changes can be envisaged regarding the standard costs of public functions and services with, however a risk to the standards hitherto maintained in the delivery of services. This second case could lead to a violation of the principle of to dispose freely of financial resources (Article 9, paragraph 1).

154. As regards the provisions of paragraphs 1, 2 and 3 of the Charter, it should be noted that the major form of revenue for municipalities still comes from transfers, awarded by the regions and most importantly by the State, which in fact grants 63.5% of all transfers. This is not in line with the Charter's provisions. Above all, specific and non-earmarked transfers, awarded by national authorities according to a specific formula, allow municipalities to participate in the tax revenues of the State (*participación en los tributos del estado*). Additionally, municipalities that meet certain requirements, may receive a share of State tax revenues (*cesión de recaudación de impuestos del Estado*). A similar "noncompliance with the Charter" situation would follow from a general adoption of strict limits to the financial autonomy of local authorities.

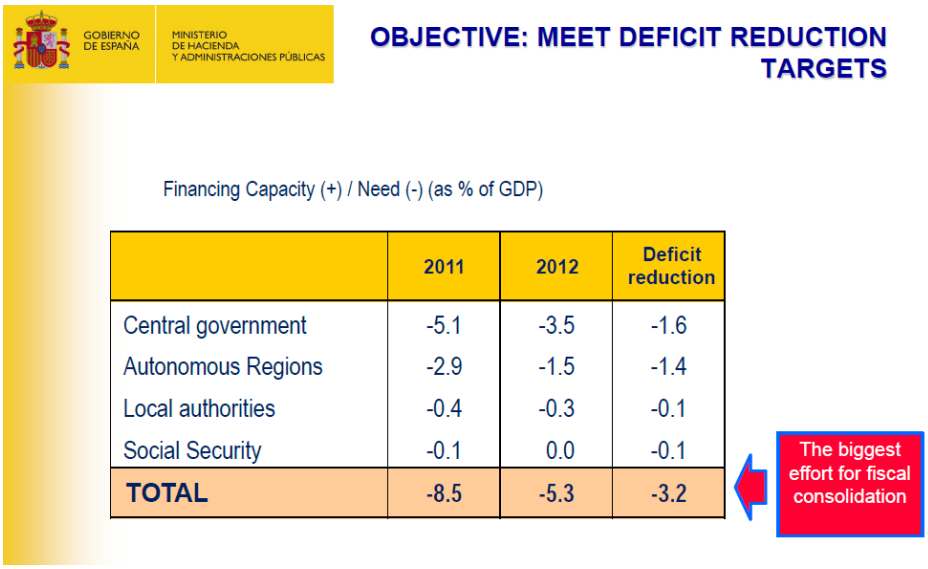

Chart: General State Budget 2012

155. In February 2012, the Ministry of Finance and Public Administration stated, at a meeting of the Senate's Local Authorities Commission, that the government planned to support local administration: proper funding of "the administration closest to the citizens" was to be ensured through initiatives such as boosting the fiscal autonomy of local councils. In addition, the ministry set out the key measures that the government planned to take in order to support local authorities, and also stated that three important decisions had already been made in less than one month to provide financial support for local administrations: the increase in the municipal property tax (IBI), an advance of 50% of the definitive payment of local authorities' share and an increase in the balance repayment period from 60 to 120 monthly instalments for 2008-2009. The Ministry also explained that the mechanism for providing funding to local authorities would be in place throughout 2012. These measures will be applied only if local government approves an adjustment plan according to the Organic Law on budgetary stability and financial sustainability of public administration. The aim of this mechanism is to ensure the sustainability of the financial situation of local authorities.

156. In this context, according to the information provided by FEMP, local authorities will receive a total of around 16 000 million euros in 2013, amounting to a surplus of 7.1%, compared to the previous year. The Rapporteurs consider this national decision as a positive step, even though it does not imply a structural change in the financing of local authorities: the increase of the 2013 local

budgets is based on the anticipation of liquidity transferred from the central government to the local authorities, with an expected return within ten years.

Budgetary prospects

(% of GDP)	2011	2012(P)	2013 (P)	2014 (P)	2015 (P)
General government balance	-8.5	-5.3	-3.0	-2.2	-1.1
Total revenue	**35.1**	**36.3**	**36.9**	**36.6**	**36.6**
Taxes on production and imports	9.8	9.8	10.6	10.5	10.4
Taxes on income, wealth, etc	9.5	10.3	10.3	10.1	10.5
Capital taxes	0.3	0.3	0.3	0.3	0.3
Social contributions	13.0	13.2	12.7	12.4	12.2
Property income	0.9	1.0	1.0	1.0	0.9
Other income	1.6	1.7	2.0	2.3	2.2
Total expenditure	**43.6**	**41.6**	**39.9**	**38.8**	**37.7**
Interest expenditure	2.4	3.2	3.3	3.2	3.1
Primary balance	-6.1	-2.2	0.2	1.0	2.0
Public debt	68.5	79.8	82.3	81.5	80.8
Administrative balance					
Central government	-5.1	-3.5	-2.5	-1.9	-1.1
Autonomous Communities	-2.9	-1.5	-0.5	-0.3	0.0
Local governments	-0.4	-0.3	0.0	0.0	0.0
Social Security administration	-0.1	0.0	0.0	0.0	0.0

Chart: National Reform Programme from April 30th, 2012

Adjustment measures in territorial administrations

Measures presented by regional governments in their Economic-Financial plans, with impact in 2012 (€ Million)			
	Revenue increases	Expenditure reductions	Total adjustment
Total regional governments	4,053	5,702	9,755

Measures presented by local governments in their Economic and Financial plans with impact in 2012 (€ Million)			
	Revenue increases	Expenditure reductions	Total adjustment
Total local governments	1,585	1,475	3,060

157. An important subject discussed during the visit concerns the imbalance between the distribution of powers and the distribution of potential income between central, intermediate and local governments. This imbalance has become more marked of late because of (among other reasons) the fall in fiscal capacity (many of the taxes levied by the municipalities depend on the property sector) and the increase in municipal costs resulting from municipalities having to provide services that correspond to other levels of government. According to several financial experts the solution to this imbalance involves an increase in the resources that the State should be injecting into the municipal finance model. A further proposal made by the experts is that the local finance model should distinguish more clearly between small and large municipalities. The rapporteurs also stress the need to establish more equitable distributive formulae, based on indicators of need (population with weightings) and capacity (index based on IBI). The aim of such a reform would be to link resources to capacities.

158. Given the decentralised nature of Spain's public finances, a strong institutional framework is essential. The medium-term budgetary framework has a good track record overall, but the crisis put Spain's fiscal institutions under strain and exposed a need to tighten the control over regional and local authorities' budgets and to take better account of cyclical developments when setting budgetary targets.

159. As mentioned in paragraph 84, the Government took a significant step forward to improve the fiscal framework with the adoption of the organic law. This law develops the constitutional balanced budget rule adopted in 2011 and sets out new financial mechanisms for budgetary coordination and

control vis-à-vis regional governments. It introduces a set of fiscal rules which are binding for all levels of Government, including public-sector companies (structural balanced budget rule, debt rule and expenditure rule). It also gives a mandate for a medium-term budgetary strategy, introduces an early warning mechanism for budget deviations, provides for corrective mechanisms and sanctions, and strengthens reporting requirements for all levels of Government. The law is a positive step, as it compels not only the national parliament, but also regional parliaments, to comply with budgetary stability. The definition of the rule in terms of a structural deficit should allow for better reflecting cyclical developments in future budget Laws. Under the original proposal made by the Ministry, two bodies are required to prepare a report on fiscal targets: the Council of Fiscal and Financial Policy (*Consejo de politica fiscal y financiera*, CPFF); the National Commission for Local Government (*Comisiòn Nacional de Administracion Local*, CNAL). During 2012, there were three meetings of the National Commission for Local Government on the issues such as the funding mechanism for payment to providers, budgetary stability in local government and the approval of a new Basic Law on Local Government as well as one on Local Finance.

160. Despite the Government's measures, some of the delegation's interlocutors complained that no specific measures have been agreed on in order to guarantee municipal governments a similar level of fiscal income.

161. Another subject raised during the visit with the delegation concerns measures required in order to avoid local government debt. As a general rule, local authorities may have recourse to the private sector for loans and credit from the banking system, as well as issuing bonds. According to Act 17/2012 of 27th December on the 2013 State Budget, local governments who achieved a positive balance in the previous (financial) period may enter into new long-term credit operations to finance investment when:

a) the total volume of outstanding debt does not exceed 75% of current revenues or accrued income;
b) the debt represents between 75% and 110%, in which case they may conclude debt transactions following authorisation by the competent authority to which financial supervision of local authorities has been attributed.

162. If local entities present a negative net savings or a debt volume greater than 110% of current revenues or accrued income they may not enter into long-term credit operations.[37] "

163. In contrast to the aforementioned rules, a major concern regarding current local authorities' finances is represented by the accumulated debt they are carrying. In fact, local authorities have been increasing their debt with private contractors and banks (short and long-term loans) over the last decades in response to the expansive budgetary policies linked to electoralism, excessive borrowing and the previously mentioned housing bubble that dominated the Spanish economy over the last twenty years. In the light of the current economic and financial crisis, the figures have become a matter of national political concern, particularly, since the end of 2009, when the total amount of Spanish local authorities' accumulated debt amounted to 34 594 million euros. This amount represented 3.3% of Spain's GDP. While more than 80% of the debt (28 770 million euros) corresponded to municipalities and municipal associations, the remaining 5 825 million euros corresponded to provinces and island councils. Furthermore, municipal companies accumulated a debt of 7 885 million euros. In the first quarter of 2011, the total accumulated debt of Spanish local authorities amounted to 35 420 million euros representing an increase of 3.2% with respect to the 2009 figures.[38]

164. Specific attention must be paid to evaluating participation mechanisms where financial measures are concerned. On the one hand, the mechanisms provided are based on the participation of representatives from the general categories of regional and local authorities, and are unsuited to the needs of participation where general national decisions are concerned (laws, administrative acts of general relevance to financial policy). On the other, a different system governs the rights of participation when the national government adopts a measure directed in detail at a single local authority (or a specific group of them). In these cases, the participation rights provided for by the Charter should be secured to the particular local authorities concerned.

[37] http://www.boe.es/boe/dias/2012/12/28/pdfs/BOE-A-2012-15651.pdf

[38] Report of the Central Bank of June, 2012

165. The Foundation for Democracy and Local Government highlighted the fact that local governments had not been included in the decision-making process in relation with the recent reforms as required by Article 9 paragraph 6. For example, the increase of the Properties Tax[39] by the Central Government was done without prior consultation, constituting a breach of Article 9.6 of the Charter, in so far as the discretional powers of the city council to determine the applicable rates within the limits established in the Local Finances and Tax Act were eliminated.

166. In general, the provisions of Article 9 are formally respected but, in respect of paragraphs 1, 2, 3 and 5, the Rapporteurs would underline that the major form of revenue for municipalities still comes from transfers, awarded by the regions and, most importantly, by the State, which in fact grants 63.5% of all transfers, a situation that is not in line with the Charter's provisions.

3.1.8. Article 10: Local authorities' right to associate

Article 10 – Local authorities' right to associate

1 Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.

2 The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.

3 Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

167. The right of associations of municipalities is guaranteed by Article 44 of the Law 7/1985 and the Fifth Additional Provision of Law.

168. In this respect, one good example is the Spanish Federation of Municipalities and Provinces (*Federación Española de Municipios y Provincias*, FEMP), which is the nationwide Association of Local Entities with the largest established base, grouping together Municipalities, Provincial Councils and Insular Councils: a total of 7 287, who represent more than 89% of Spanish Local Governments. The FEMP maintains working relations with the Federations of Local Entities of regional scope who so desire, signing with each of these a protocol that specifies the terms and extent of such agreement in each case. The FEMP also maintains good relations with the Association of Basque Municipalities-EUDEL.

169. Another positive example was given to the delegation during the meeting with the representatives of FAMSI – the Andalusian Fund of Municipalities for International Solidarity, which is a network of municipalities and provinces and other private and public institutions. FAMSI groups together more than 150 institutions in Andalusia and was founded with the aim of co-ordinating and promoting the public decentralised international co-operation carried out by local governments in Andalusia. FAMSI is present in Latin America, Africa, especially in Morocco, and Asia.

170. In the light of Article 10 of the Charter the rapporteurs conclude that Article 10 of the Charter is fully respected in Spain.

3.1.9. Article 11: Legal protection of local self-government

Article 11 – Legal protection of local self-government

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

171. In Spain, two different legal devices are relevant as regards Article 11 of the Charter: "Ordinary protection", which is enforced by regular or administrative courts; and secondly, "constitutional protection" that is carried out by means of a special appeal before the Constitutional Court.

172. Ordinary protection: Should a national or regional agency adopt a decision or an administrative regulation which could interfere with local competences or touch upon the legal realm of local self-government, the local authority which considers itself affected by that measure may sue the State or

[39] The increase of the applicable rate of the Properties Tax established in Article 8 of Royal Decree Law 20/2011, of 30th December, on urgent measures regarding the budget, taxes and finances to correct the public deficit.

regional agency in the administrative courts, claiming that local autonomy has been violated. These courts may set aside and even quash the contested State or regional measure, if they find that there is a clear and evident violation of local autonomy. The case-law of this court of justice is, consequently, very important, and constitutes an unavoidable element of the legal idea of "local autonomy".

173. Constitutional protection: An additional difficulty is presented by the protection of local autonomy from violations as a result of statutes (passed either by the national or the regional legislatures). In essence, administrative courts do not have the power to annul acts of parliaments. In Spain, such a power is exclusively reserved to the Constitutional Court. Nevertheless the *locus standi* in this Court has traditionally been very restricted and was not recognised as a local authority prerogative. Therefore, if national or regional parliaments pass a statute involving some type of violation of local autonomy (for instance, an expediency control by regional or national agencies of local government activity) the local administration could neither react nor bring a constitutional challenge against such a piece of legislation. This situation changed dramatically in 1999, when the Constitutional Court Act (*Ley orgánica del tribunal constitutional*) of 1979 was amended, in order to provide for a specific procedural mechanism, which allows local authorities to protect their autonomy. This device is referred to as "Conflict in defence of local autonomy" (*Conflicto en defensa de la autonomía local*).

174. As regards the case law on provincial autonomy, a number of specific guarantees - ("minimum constitutional standards" as they have been qualified by the doctrine) - reveal the constitutional scope of provincial autonomy. Especially relevant are the guarantees (that result from the Constitutional case-law) to preserve the financial aspects of provincial autonomy. In addition, the constitutional case-law has emphasised the responsibility that depends primarily on the State to provide adequate financing of municipalities and provinces.

175. The provinces, in accordance with constitutional jurisprudence, are empowered to determine the structure of expenditure and, consequently, to decide what specific amount of money is being spent in each of its areas of competence.

176. Despite this Constitutional protection, the document provided by the Constitutional Court to the Congress delegation confirmed the extremely limited use of this very important means of legal protection of local authorities (an average of 2 appeals per year in the twelve years from 2000 to 2011). According FEMP the protection through the Constitutional Court is more formal than real, as the conditions for the admissibility of a case before the Court led so far to declare the admissibility of only 2% of the complaints lodged to the Court.

177. The rapporteurs recall that Article 11 requires that local authorities shall have the right of recourse to a judicial remedy which is the case *de jure*. Therefore they concluded that Article 11 is respected by Spain.

3.2. Additional Protocol to the Charter on the right to participate in the affairs of the local authority

178. With regard to the right to participate in public affairs at local level in Spain, the rapporteurs note that Spain has good practices in this respect. One of the examples is the fact that Spain gives non-national residents the right to participate in local elections. Foreigners can vote in Spain's municipal elections if they are official residents of Spain and citizens of the European Union or citizens of a country with which Spain has a reciprocity agreement.

179. Another example of direct participation the rapporteurs would like to highlight, are the regional referendums organised throughout Spain. In this sense, the rapporteurs note that Spain, despite some positive examples on participation in public affairs, has not yet signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

180. The Rapporteurs were informed that the signature of this Protocol requires the agreement of the autonomous communities. The rapporteurs encourage national authorities to put this topic on the agenda of discussion of the Conference of Presidents in order to sign and ratify it in the near future.

3.3. The role of the Senate and the instrument of participation in the national government's decisions

3.3.1. Reform of the Senate

181. The Senate of Spain (*Senado de España*) is the upper house of Spain's parliament (the *Cortes Generales*) and the upper house of territorial representation. It is made up of 266 members: 208 elected by popular vote, and 58 appointed by the regional legislatures. All senators serve four-year terms, though regional legislatures may recall their appointees at any time.

182. The last election was held on 20 November 2011. During the 10th Legislature, the Senate has a total of 266 senators, elected by a dual procedure:

a) Most of them (208) are elected by provinces; each province elects four senators, by universal suffrage in a free, equal, direct and secret vote.
b) Furthermore, each autonomous community appoints one senator, and an additional senator for every million inhabitants in their respective territories. At present, the total number of senators appointed by the autonomous communities is 58, pursuant to the agreement adopted by the Permanent Deputation of the Senate during its sitting held on 28 September 2011.

183. Indeed, the Senate and its territorial representation is one of the subjects most widely discussed by the public. When the Constitution was drafted and adopted in 1978, the "Statute of autonomies" did not represent a specific legal reality. The process of autonomy, in fact, was conceived of as an on-going process requiring constant adjustment between often contradictory aims.

184. In this regard, the Spanish Constitution has a particularity which sets it apart from those of other European countries. Political power is shared between the central and the sub-national authorities, without specifying what these sub-national authorities are and how they relate to each other. Therefore, neither the number of autonomous communities, nor the scope of their competence are determined by the Constitution. This unprecedented situation is the result of the choice of the Fathers of the Constitution to use the "principle of disposition" that enables each nationality or region to decide freely whether or not it wishes to become an autonomous community.

185. If the Senate, which was established during this phase of constitutional transition, initially intended be a chamber of territorial representation, the implementation of these aims could not actually have been effective in 1978. At the time, the province was the only territorial entity that corresponded to a material reality, since the autonomous communities, which were quickly put in place, did not exist at the beginning.

186. Even though the autonomous communities are composed of provinces, the province as such has no corresponding territorial authority, a fact which, once again, may be explained by the initial choice of the Fathers of the Constitution.

187. This has the immediate consequence of putting the Second Chamber in the same situation as the First Chamber, one that is dominated by the most influential political parties, and to distance it from any territorial reality. Therefore the intentions of Article 69.1 of the Constitution have not been realised. The question which gives rise to much debate is: "Is there really any form of territorial representation, even at the provincial level?" The power of the political parties raises serious doubts in this respect. As the Second Chamber is essentially a mirror of the first, bicameralism loses its "raison d´être". The democratic legitimacy granted to the Senate should have provided both chambers with equivalent competences. This does not seem to be the case.

188. Regarding the legislative, revision and controlling functions of the Senate, can it be said that both Chambers are equal in status and power? What is to be said about the fact that the government is answerable only to the *Congreso de los Diputados* and not to the Senate, and about the fact that the Senate is not involved, at any point, in the process of the formation/creation of the government?

189. From 2003 until now, no significant changes have been made regarding the legislation on the Senate's organisation and functioning. This is mainly due to the necessity of a constitutional change to the reform of the Senate. A constitutional change has been impossible in the period considered; the political system, chiefly where institutional matters were concerned, has been totally deadlocked.

190. During this period, the most important attempt to change the Senate's role, functions and composition was made by the Spanish government which, in 2006, asked the Council of State to make a report proposing Senate reform. The supreme advisory body, also in 2006, approved a report calling for a constitutional reform based on the strengthening of the Senate's participation in the legislative function and on reinforcement of the territorial representation of the autonomous communities, giving each autonomous community six senators plus one additional member for every million inhabitants. As to the manner of electing the senators, the report left open the choice between direct election (preferred by the Council of State) and an indirect election (approximating the German *Bundesrat* system).

191. The report did not succeed in raising a new debate on Senate reform: there is still a deep gulf between the centralist approach, which upholds the existing system (election of four senators for each province, independently of the population) with the additional argument of major representation of local authorities, and the autonomous communities' approach, asking for an open transformation of the Senate into a "territorial chamber" (where "territorial" mainly means a "regional" representation). Other interlocutors have told the Rapporteurs that the issue of representation in the Senate generates a problem of representation in urban areas as compared to rural areas, the latter being better represented.

192. The persistence of these different approaches was confirmed during the monitoring visit. On the one hand, the President of the Parliament of Andalusia said, "We believe that the system of regional representation in the Senate in Spain still admits of significant improvements to make the Senate a real chamber of territorial representation. Territorial representation in the Senate right now is very small". On the other hand, the President of the Senate Committee of Local Entities, at the same time Mayor of Malaga, defended the direct election of Senators at provincial level.

193. As result of the public debate in recent years, it appears that there is a public will to reform Spanish bicameralism.

194. Several sources spoke of a possible agreement among the political parties in the Senate to create a special commission tasked with preparing a new proposal for Senate reform. This decision is linked to the significant level of unpopularity of the Senate which is perceived by the public opinion as a useless institution, the feeling probably being aggravated by the current period of financial crisis. The mandate of this commission is still not completely clear: it could confine itself to proposing a purely functional reform (for example: the conversion of the Senate into a Chamber of first reading for all bills concerning legislation on regional and local matters) or move a proposal for changing the composition of the Senate and the electoral system.

195. Taking the previous Congress recommendation into consideration (REC 121(2002), the Rapporteurs consider that the recommendation made concerning the Senate has not been implemented.

3.3.2. The instruments of autonomous communities to participate in the national government's decisions

196. The necessity of creating a system of relations between the State executive (central government) and the executives of the autonomous communities led to the creation of a series of cooperation mechanisms, namely: 1) a general one, the Conference of Presidents; 2) the Sectorial Conferences, namely the Council of Fiscal and Financial Policy (*Consejo de politica fiscal y financiera*, CPFF).

197. The creation of the Conference of Presidents has been the most noteworthy initiative, both politically and institutionally. This Conference is the highest body of political co-operation between the Government of Spain and the governments of the regions and the cities of Ceuta and Melilla, as stated in the first article of the regulation, which was approved on the conference, held on 14 December 2009.

198. The objectives of this body are to discuss the broader concepts of public, sectoral and territorial policies on a state level, to debate on the strategies regarding joint actions, and matters of significant importance for the State of Autonomies, affecting state and regional areas of authority, according to the same rules.

199. From its creation in 2004 until today, five[40] Conferences have been held. The most recent one took place on 2 October 2012 in Madrid with the participation of President Mariano Rajoy, Vice President Soraya Sáenz de Santamaría, the Minister of Finance and Public Administration Cristobal Montoro, and Secretary of State for Public Administration Antonio Beteta, on behalf of the Government of Spain.

200. The Prime Minister emphasised the unanimous efforts of all regions to achieve the deficit targets, in order to meet the membership obligations of the euro zone and the European fiscal agreements.

201. In the joint statement issued after the meeting in the Senate, the Conference of Presidents expressed their commitment to fulfil the objectives for reducing the structural deficit. Furthermore the Conference agreed that the Council of Fiscal and Financial policy will establish a procedure for the following year, with the aim of determining the deficit targets, which were set during the fiscal consolidation with the EU.

202. Sectorial Conferences as multilateral cooperation bodies between Ministries and autonomous communities departments exist in practically all areas of government in Spain. According to the President of the Parliament of Andalusia, they “meet quite often” and are “very operational”. Another Andalusian interlocutor told the Rapporteurs that local entities need better representation in Sectoral Conferences.

203. The Council of Fiscal and Financial Policy represents the Government of Spain and the regional governments in economic, fiscal and financial matters. This Council, according to the President of the Parliament of Andalusia “is required to approve state funding to the regions, has to inform, especially now in the present financial crisis, on adjustment plans that all the regions must carry out to achieve a balanced budget and have to be approved by the Council. In general, it has to decide on the measures and provisions regarding the economic, financial and fiscal issues of the State”.

204. Another instrument of cooperation set up in October 2012, is a commission to reform public administration. Some of the aims of this Commission are to develop rationalisation measures, to eliminate administrative burden by simplifying rules and procedures and to avoid duplication. The Commission is attached to the Ministry of Finance and Public Administration, through the State Secretary of Public Administration (*Secretaría de Estado de Administraciones Públicas*). The representatives of FEMP told the delegation that this new Commission work together with FEMP on issues that concern them.

205. In conclusion, given the wide variety of instruments for co-operation between national government and the autonomous communities executives, the Rapporteurs conclude that the situation is in line with the recommendations made by the Congress in this respect.

[40] The first four conferences were focused on the following topics: I Conference of the Presidents (28 October 2004): Institutionalization of the Conference, development of participation of the autonomous communities in European Community Affairs, analysis of health care financing; II Conference of the Presidents (10 September 2005): State-Autonomous agreement on health financing; III Conference of the Presidents (11 January 2007): Adoption of a joint paper on research, technological development and innovation, and the creation of sectorial conferences and the creation of a working-group for the development of a regulation on the Conference of Presidents ; IV Conference of the Presidents (14 December 2009): During this meeting the Conference unanimously adopted the Rules of Procedure of the Conference of Presidents.

4. THE IMPACT OF THE FINANCIAL CRISIS ON REGIONAL AND LOCAL DEMOCRACY IN SPAIN

4.1. Proposals to reorganise the whole Spanish administrative system

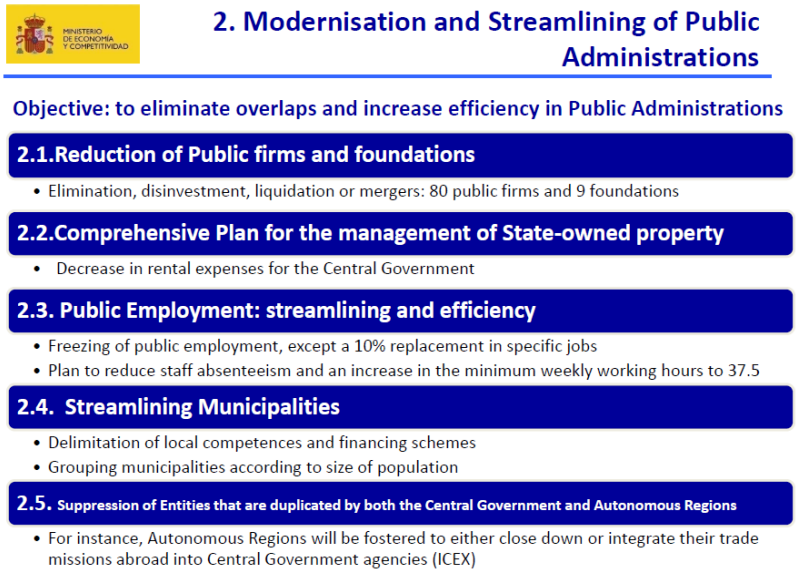

Chart: National Reform Programme from April 30th, 2012

206. The debate regarding a reform of the Spanish system of local administration was affected by the impact of the economic and financial crises in 2007-2008, not only by the adoption in 2010 of extraordinary measures to combat the public deficit. From this date on, several efforts have been made to put different proposals forward, with the essential aim of rationalising the administrative system and therewith minimising, and even avoiding, the current overlap of competences.

4.1.1. Measures to reduce the representative autonomy of local authorities and regional parliaments

207. As mentioned in paragraph 125, the government reform programme contains a measure which concerns the suspension of the extraordinary salary instalments paid in December to all civil servants and a 30% reduction in the number of local councillors to a maximum of 35 in the largest municipalities. The PSOE considers that the reform to reduce the number of local councillors is based on a false premise, namely "that all members of local government are paid". Many studies claim that 7 out of 10 councillors do not receive remuneration for their services. One could say that there is no saving here, but rather a cost incurred at the expense of democracy in terms of electoral representation.

208. As said above in paragraph 126, the austerity measures were also imposed on the regional members of parliaments, through pay cuts for deputies *(dedicación exclusiva)*. The Parliament of Castile La Mancha adopted drastic measures, according to which, from 1 January 2013 onwards, out 42 of their 49 regional deputies will no longer receive the totality of their allowances. In addition, most autonomous communities have also decided to reduce the number of their regional deputies. All these measures represent an attempt to limit the representational autonomy of local and regional authorities.

4.1.2. Measures on allocation of powers and co-operation instruments for regulating relations between national and regional governments (CAs)

209. According to the information received by the Congress delegation, no significant changes are expected in this matter, concerning either allocation of legislative powers between State and autonomous communities or the representation of autonomous communities in national decision-making and State/autonomous communities co-operation. Changing the apportionment of powers means changing the Constitution or reopening the chapter of revising the autonomous communities' Statutes, both of which are of no possible use for the new government as solutions, since it can rely on general coincidence of the political majority with that of almost all the autonomous communities (except for Catalonia, Pais Vasco and Andalusia). A broad political agreement is therefore to be

expected for policies of strong political control over public expenditure, which require no change in the legal distribution of powers.

4.1.3. Measures on reorganisation of local government (abolition of local government bodies or reduction in their numbers; distribution of powers among levels of government; co-operation instruments for regulating the relations between regional and local governments).

210. The financial crisis seems to have had a significant impact on the organisation of local government in Spain. There are wide-ranging discussions in the national government, the national Parliament, in the autonomous communities and at local level on the necessity of an extensive reorganisation based on the principle of saving public resources through a simplification of the system, firstly in terms of correct redistribution of public responsibilities among the various levels of government, and secondly in terms of removing redundant bodies and institutions created in earlier times. The search for greater efficiency in management can only be welcomed, provided it respects the principle of subsidiarity established in Article 4.3 of the Charter. The reorganisation of tasks and the consequent elimination of overlapping competences should not lead to a removal of competencies from local authorities, even if they would be better able to assume such a task, than other levels of government

211. The reform still under discussion has a second, not minor, target, in order to reduce the cost of the whole administrative system: the marked reduction in the number of the wide range of bodies and institutions acting between local (*municipios*) and regional (*comunidades autónomas*) level. This implies the separate consideration of different categories of public bodies: i) the *diputaciones* (or other local authorities, like *comarcas*, acting at supra-municipal level); ii) the forms of associative co-operation among municipalities (like *mancomunidades*; iii) public bodies or private entities under public control, created by the different authorities (at regional or local level).

i. Diputaciones

212. The role and status of *diputaciones* are regularly debated in Spain. Articles 137 to 141 of the Spanish Constitution deal with their competences, and guarantee the boundaries of *provincias* (the *diputaciones* being the local authorities acting in the provincial territories). Some autonomous communities (in particular Catalonia) have always attempted to bypass the provincial level in favour of different, historical territories named *veguerias*. *Diputaciones* play an important role in the management and support services to small local entities.

213. In the reorganisation envisaged by the government to face the financial crisis, the ideas on the *diputaciones* are crucial. The main idea, set out in a draft study and in a draft bill (to be presented to the *Congreso* in the near future) provided to the Rapporteurs by the Ministry of Finance and Public Administration, is to reinforce the *diputaciones*, so that they are not only a level of local authority that assist the smaller *municipios* in the exercise of their functions (the present situation), but can also enjoy the exercise of competences normally assigned by law to *municipios* with fewer than 20 000 inhabitants. In this way, the *diputaciones* could remain a second tier of local government, fulfiling municipal responsibilities, while also maintaining the system of indirect election of its organs by the municipal councillors: since the responsibilities are municipal, the *diputaciones* would go on as an offshoot of municipal autonomy.

214. According to the information provided to the Rapporteurs, the list of mandatory competences to be given to the *diputaciones* should be identified in two different ways:

a) on the basis of a previous evaluation of the effective fulfilment of the competences by the smaller municipalities. The central government will establish “standards”; the competences exercised under these standards will be automatically given to the *diputaciones*;

b) on the basis of an evaluation, already made at central level, on the competences that are more efficiently exercised at the administrative dimension of the *diputacion.*

215. In both cases the evaluation of the “efficiency in competences” could create problems of unwarranted uniformity (local government is different from one region to another) and of participation, particularly for the *municipios* directly involved in the evaluation.

216. In that perspective, as the *diputaciones* fulfil municipal competences, the indirect election of their governing bodies is acceptable and not to be considered contrary to the principle of direct election laid down in Article 3, paragraph 2 of the Charter. Nevertheless, a different argument should be used if, instead of mere municipal responsibilities, the *diputaciones* should be given its own (neither municipal nor regional) competences, as is the case in several European countries (Italy, Germany and France) where the second tier of government exercises the so-called "area-wide" responsibilities, not attributable either to the *municipios* or to the regional level (so as not to overburden the regional level with too many operational responsibilities). In this second case, the direct election of a local authority with its own competences should be the solution more in line with the Charter.

217. The choice of reinforcing the *diputaciones* is regarded by the new government as an alternative to other forms of exercise of supra-municipal responsibilities. This concerns, in particular, all the voluntary forms of associations among municipalities, like *mancomunidades* or *consorcios*, which may be suppressed following an evaluation of the best way to exercise the responsibilities that will be assigned to the *diputaciones*.

218. Reinforcement of the *diputaciones* is also considered as an alternative to merging the smallest municipalities - a very delicate issue whenever such a merger is mandatory.

219. The opposition party and some autonomous communities such as Catalonia have already raised objections to the policy of reinforcing the *diputaciones*. The new Statute of Catalonia, without removing the provincial level (guaranteed by the Constitution and generally used for national elections (chiefly the direct election of the great majority of senators), is aimed at creating the *veguerias*, a completely different type of local authority. So, the general solution of using *diputaciones* for the mandatory exercise (applicable nationwide) of the functions of the smaller municipalities would probably face strong opposition from some autonomous communities.

220. As regards the situation in small municipalities, a representative of PSOE drew the Rapporteurs' attention to the issue of poor management in small municipalities, and the government's intention to take away competences from these municipalities. Another issue raised is the insufficiency of existing financial equalisation procedures or the lack of equivalent measures to correct the effects of the unequal distribution of financial sources between smaller and larger municipalities. The rapporteurs underline the importance of ensuring that smaller municipalities be given greater management support from the provincial administration and that a system of equalisation between municipalities is established, in order to transfer resources from the richer to the poorer local authorities.

ii. Comarcas

221. While the proposed reform seeks to avoid the merging of small municipalities and is aimed at drastically reducing other forms of association and co-operation, the *comarcas* are confirmed with a remit very similar to that of *diputaciones*. They assist the smaller municipalities and directly exercise the authority of *municipios* with fewer than 20 000 inhabitants. The remit is the same, but *comarcas* have a different territorial dimension; they seem to be a more useful system for territories smaller than a province (very difficult to modify) or for territories that go beyond the boundaries of the provinces.

222. The representative of the central government assured the Rapporteurs that, in case of allocation of competences of the smallest municipalities to an upper level, the existing *comarca* will be the only administration that will receive these competences. In that way the risk of duplication can be avoided and the *comarca* would be obliged to coordinate its action with the *diputacion*.

223. Nevertheless, maintaining the *comarcas* (until now very few in number and existing only in few autonomous communities) seems rather inconsistent with the aim of strongly streamlining the local administrative system, and creates a certain superimposition of similar local authorities with the same indirect system of election (as already stressed in Recommendation 121).

iii. Public bodies or private entities under public control created by the different authorities (at regional or local level)

Public bodies

224. The "simplification" policy should, according to the information received, aim to considerably reduce the various bodies and entities created by the regional and local authorities. Firstly, as already

pointed out, most of the "associated forms" of local government (*mancomunidades* and *consorcios*) have been created to allow for the exercise of the responsibilities of smaller *municipios* on a larger scale. These tasks should be given only to the *diputaciones* (or alternatively, to *comarca*s). The draft act on Rationalisation and Sustainability of Local Government (*Ley de racionalisacion y sostenibilidad de la Administracion local*) mentions that 71.3% of *mancomunidades* do not meet their obligations to file annual accounts.[41]

225. The Andalusian PSOE members have expressed their position on this issue, namely that they defend the "associated forms" (*mancomunidades* and *consorcios*) and are convinced that without the ability to form *mancomunidades*, the municipalities, especially the less populated towns, would be further weakened in their ability to promote employment and local development. They also noted that "Municipalities should be free to decide whether or not to belong to a *mancomunidades* or consortium, and must have autonomy to decide whether or not a *mancomunidad* is viable. It is not to the government to decide on this issue".

226. Nevertheless, it is useful to refer to the organisational autonomy of local authorities stipulated in Article 6, paragraph 1, according to which they "shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management". In the light of this principle, one could always verify that reduction of bodies and institutions created to permit better exercise of responsibilities does not result in a reduction of the local authority's capacity to meet "local needs" by necessary "effective management".

227. The rapporteurs consider that a reduction in the number of levels of government would appear to be a reasonable option in the context of the economic crisis, but that any related reforms should be undertaken with care and due attention, so that the principles of local governance are respected, with the ultimate goal being to provide municipalities with an effective capacity to provide local services. The rapporteurs underline the importance of organising a wide consultation process before taking any decision in this respect.

Private entities

228. The same argument can be used for private entities (private companies, associations and foundation regulated by private law), created by local authorities and controlled by them. In this case, the opposite risk seems to apply, i.e. a new wave of creation of such private entities as a means of increasing efficiency and saving money. It being agreed that the decision on the organisational solutions should remain in the hands of local authorities (again the principle of Article 6, paragraph 1 of the Charter), it is important to stress that, from a local democracy standpoint, partial privatisation of the organisation for exercising public functions is a controversial solution. On the one hand, some solutions used in private organisations could ensure more efficiency in the public sector; on the other hand, these solutions, even when subject to public control, are more remote from the citizens and their ability to exercise transparent, democratic control.

5. CONCLUDING REMARKS

229. The current crisis reigning in Europe has obliged Spain to clean up its public finance sector. This reorganisation and the related reduction in public expenditure has sometimes had severe consequences for the citizens. In order to get their financial house but also to improve the efficacy of service delivery, the Spanish authorities have decided to initiate a process of global local government reform.

230. This report has focused on two major areas: Spain's fulfilment of obligations deriving from the Charter and the impact of the financial crisis on local self-government in Spain.

231. The Charter, being an international treaty, has the binding effect of adapting a country's domestic law to its provisions. It also obtains the status of a source of law, whose provisions are directly applicable. The Charter has frequently been used as an interpretative authority by the courts.

232. As regards the scope of local self-government as laid out in Article 4 of the Charter, and in the light of the foregoing, the core challenge for any reform plan remains the issue of "*competencias*

[41] http://www.lamoncloa.gob.es/ConsejodeMinistros/Enlaces/130712-enlacesostenibilidad.htm

improprias" on the one side, and the overlap of competences on the other. An Andalusian Member of Parliament told the rapporteurs that the provision of services under the *"competencias improprias"* of Spanish municipalities is estimated at 10,000 million euros per annum, i.e. 25% of the total municipal expenditure on average. The variety of initiatives that have been launched at the local, regional and national levels are to be welcomed, although they reveal, at the same time, the urgency of the problem of overlapping competences, which lead to an aggravated loss of 32 300 million euros[42] per year (see para. 99 above). Positive progress has been made by means of the new Organic Law on Budgetary Stability and Financial Sustainability of Public Administrations, which is based on an extensive participation of regional and local authorities in the decision-making process.

233. The tendency to delegate powers under sectional legislation (such as at autonomous community level) rather than attributing them directly to local authorities may lead to a supervision of expediency and therewith contradict the objectives of the Charter. Also with regard to subsidiarity as enshrined in Article 4, paragraph 3 of the Charter, the Rapporteurs propose to wait and see the effective implementation of recent innovations focusing on the position of the *communidades autónomas* in the respective autonomous communities regulations.

234. As regards consultation and collaboration with local and regional authorities, there is a constant and regular working relationship between central government and the FEMP.

235. The rapporteurs conclude that Article 4 is not fully respected, particularly in the delegation of competences to municipalities, despite the clear objective of national authorities to act in compliance with the principle of subsidiarity. The rapporteurs will however follow-up the implementation of the proposed reform in this field.

236. As regards Article 5 of the Charter, local authorities appear to be formally consulted on projects to change local boundaries.

237. The situation of the human resources at local level is in line with the provisions of Article 6 of the Charter.

238. In respect of Article 7 of the Charter, the delegation was informed that the salaries of locally elected officials vary enormously in Spain. According to information provided by several interlocutors, there is a large gap between the respective wages of most mayors at the national level. Several measures are underway at the moment in order to establish a framework for the remuneration of mayors with the aim to determine either a balance between salaries of mayors or a ceiling (maximum limit) therefor. The Rapporteurs encourage national authorities to continue reforms in this direction, bearing in mind objective criteria (population, financial situation of municipalities) in order to consider a similar reward for all local and regional elected officials and to ensure a maximum of transparency in local management. The Rapporteurs also recommend to establish a minimum limit for remuneration of mayors in order to guarantee appropriate financial compensation and in the same spirit, to provide rules of remuneration for members of the parliaments of the Autonomous Communities, that will allow them to perform their duties properly.

239. The general provisions of the present Spanish legislation on the system of supervision carried out by the upper levels of government on local authorities is in compliance with Article 8 of the Charter. There exists, however, a specific risk of reduction of local autonomy as regards financial supervision by the central government.

240. The topic of financial resources of local authorities (Article 9) is another essential area of focus, particularly in view of the recent economic crisis. In this regard, one has to welcome the latest government measures, which were aimed at providing financial support for local administrations. A positive example in this context is the amount of liquidity allocated by anticipation for 2013, which is 7.1% higher than the amount allocated in 2012 to local authorities, with an expected return within ten years.

241. Nevertheless, efforts should be made, in order to replace the municipal economic activities tax for another type of tax that would achieve a similar level of income, as was recommended in response to the last monitoring visit. No specific measures have yet been agreed on, in order to guarantee municipal governments a similar level of fiscal income.

[42] According to the 2012 report of the "Foundation on Progress and Democracy

242. In general, the provisions of Article 9 are formally respected but, in the respect of paragraphs 1, 2, 3 and 5, the rapporteurs underline that the major form of revenue for municipalities still comes from transfers, awarded by the regions and most importantly the State, which in fact grants 63.5% of all transfers, and this state of affairs cannot be said to be in line with the Charter's provisions.

243. As regards Article 10, the existing associations, namely the FEMP, FAMSI, and their active cooperation with the central authorities is a very good example of good practice and leads the Rapporteurs to conclude that Spain is in full compliance with the provisions of Article 10.

244. Furthermore, local government remains a constitutional element in Spain, which is protected by legal and procedural devices. The concept of ordinary protection, put into practice by administrative courts, as well as protection provided by the specific device of "conflict in defence of local autonomy" which developed since the last amendment of the Constitutional Court Act in 1999, effectively allow local authorities to protect their autonomy. The Rapporteurs therefore conclude that Spain is also in full compliance with Article 11 of the Charter.

245. With regard to the right to participate in public affairs at local level, the Rapporteurs note that Spain has good practices in this respect. However, it has not yet signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207). As there seems to be a *de facto* compliance with the Additional Protocol, the Rapporteurs encourage the national authorities to launch a discussion on the signature and ratification of this Congress instrument in the near future.

246. As concerns regional democracy, a re-evaluation of the progress since the last visit makes it clear that no sufficient effort has been made towards a far-reaching reform of the Senate to enable a fairer representation of the interests of the autonomous communities at national level. In light of the generally deadlocked political situation, the Rapporteurs have observed not only a necessity for constitutional change but also a public will to reform the Senate.

247. The rapporteurs also note the wide variety of instruments for co-operation that has been developed between the national government and the autonomous communities executives (Conferences of Presidents, Sectorial Conferences (Council of Fiscal and Financial Policy) somehow, but not completely, compensates for those gaps and, thereby, indirectly fulfil the previous recommendations.

248. As regards the impact of the financial crisis in Spain, the present situation of the national budget and the necessity of a severe policy of budgetary control does not only come (as in other countries like Italy or Greece) from an increase in the total amount of public debt (all levels of government included), but also from a specific source: the crisis in the real estate sector. It is clear that the current situation in Spain includes structural problems that justify a thorough territorial reorganisation. In fact, the Rapporteurs underline that the urgent need to address the economic crisis should not prevent the careful preparation and analysis of the possibility and feasibility of carrying out certain reforms and, particularly, the need to quantify and anticipate any negative effects of such reforms.

249. The rapporteurs have taken note of two majors issues the Spanish system is confronting at all levels (as mentioned in para. 87 above), namely that political corruption is causing growing public concern and that some regions and local governments have succumbed to irrational spending practices including the construction of "pharaonic" projects, large salaries for some local and regional politicians, etc.

250. While the reform plans of the system of local administration have been in deadlock since 2007-2008, wide-ranging discussions have taken place to simplify the system, both in terms of a correct redistribution of public responsibilities among the various levels of government, and also in terms of removing redundant bodies and institutions established in earlier times. Regarding simplification in the distribution of powers, the Rapporteurs suggest that the Spanish government and the legislator create a financial system that can fully guarantee (at national and regional level) every *municipio*'s complete financing for the fulfilment of its "own right" and "delegated" responsibilities (this is the target already set for the proposed reform) and, at the same time, create a system of equalisation in order to transfer resources from richer to poorer *municipios*.

251. In order to streamline public bodies and institutions, the reinforcement of the *diputaciones* could be considered as an interesting alternative to a merger of the smallest municipalities. Maintaining the *comarcas* seems rather inconsistent with the aim of strongly streamlining the local administrative system, and creates a certain superimposition of similar local authorities with the same indirect system of election. Accordingly, the Rapporteurs welcome every attempt to simplify the administrative system that is aimed at reinforcing local democracy. In this perspective, the progressive reduction of bodies indirectly responsible to the citizens alone goes in the right direction.

252. Due to the legacy of its history and specific circumstances, Spain has a complex institutional system which provides a large degree of autonomy to its 17 Autonomous Communities. It is a very democratic and highly decentralised country. The Rapporteurs have followed the recent developments in the regional institutional system with great attention. They have taken note of the strong independence movements in some regions. The Rapporteurs encourage all the actors of the Spanish institutional system to look for balanced solutions through consultation and negotiation with all levels of government, respecting their autonomy and based on the principle of subsidiarity.

APPENDIX 1 – PROGRAMME OF THE CONGRESS MONITORING VISIT TO SPAIN – PART 1 (5-8 JUNE 2012)

CONGRESS MONITORING VISIT TO SPAIN
Seville, Madrid and Toledo (5 – 8 June 2012)

PROGRAMME

Congress delegation:

Rapporteurs:

Mr Marc COOLS	Co-rapporteur on local democracy Chamber of Local Authorities, ILDG[43] Member of the Monitoring Committee of the Congress Alderman of Uccle (Belgium)
Mr Leen VERBEEK	Co-rapporteur on regional democracy Chamber of Regions, SOC[1] Member of the Monitoring Committee of the Congress Queen's Commissioner of the Province of Flevoland (Netherlands)

Expert:

Mr Francesco MERLONI	Consultant (Italy) President of the Group of Independent Experts on the European Charter of Local Self-Government of the Congress

Congress Secretariat:

Ms Stéphanie POIREL	Secretary of the Monitoring Committee of the Congress E-mail: stephanie.poirel@coe.int

Consecutive interpretation: Spanish and English

[43] ILDG: Independent and Liberal Democrat Group of the Congress
SOC: Socialist Group of the Congress

Tuesday, 5 June 2012 - Seville

Meeting with representatives of the City of Seville

- Ms Maria Asuncion FLEY GODOY, Deputy Mayor Responsible for Finances and Public Administration
- Secretary General of the City of Seville

Meeting with the Andalusian Fund of Municipalities for International Solidarity (FAMSI)

- Mr Fernando RODRIGUEZ VILLALOBOS, President of the FAMSI, President of Provincial Council of Seville
- Mr Antonio ZURITA CONTRERAS, Director general of the FAMSI
- Mr José Luis LANZA, Member of the Technical Board of FAMSI, Adviser for Cooperation of the Provincial Council of Seville

Joint meeting with the Autonomous Community of Andalusia (Local Government and Parliament)

- Mr Manuel GRACIA NAVARRO, President of the Parliament of Andalusia
- Ms Elvira SAINT-GERONS HERRERA , the General Secretary of External Actions, Junta de Andalusia

Meeting with the Audit Chamber of the Autonomous Community of Andalusia

- Mr Antonio M. LOPEZ HERNANDEZ, President

Wednesday 6 June 2012 – Madrid and Toledo

Meeting with the Members of the Spanish National Delegation to the Congress

- Ms Ana Isabel ALOS LOPEZ, Mayor of Huesca, Head of the Spanish delegation to the Congress
- Ms Teresa ARCINIEGA ARROYO, Member of the Parliament of Aragon

Joint meeting with Associations:

- **Spanish Federation of Municipalities and Provinces (FEMP)**

- Mr Angel FERNÁNDEZ DÍAZ, Secretary General
- Mr. Alfonso RUS TEROL, President of Provincial Council Committee and President of Valencia Provincial Council
- Mr Francisco DIAS LATORRE, General Director of Law Services and Territorial Cooperation
- Iñaki GALDEANO LARIZGOITIA, Head of Technical Services EUDEL Basque Municipalities Association

- **Federation of Municipalities of Madrid (FMM)**

- Mr David PEREZ GARCIA, President of the Association and Mayor of Alcorcón

Meeting with the Ministry of Finance and Public Administration

- Mr Jaime PARRONDO AYMERICH, Directorate General for the Coordination of Competencies with the Autonomous Regions and Local Entities
- Ms Paqui SANTONJA, Special Adviser, Directorate General for Autonomous and Local Cooperation
- Mr Enrique ORDUÑA, Assistant Director of Local Administration
- Mr Gabriel HURTADO, Assistant Director of Studies and Financing of local authorities
- Ms Socorro PROUS, Deputy Head of International Relations of the Sub-Directorate of General Affairs and Coordination

Joint Meeting with representatives of the Autonomous Community of Castile-La Mancha

- **Government of the Autonomous Community of Castile-La Mancha**

- Ms María del Mar ESPAÑA MARTÍ, Deputy Regional Minister of the Autonomous Community of Castilla-La Mancha, responsible for the Regional President's office and public administration
- Mr Carlos CORROTO GÓMEZ, Secretary General of the Regional President's office and public administration
- Ms Rosario REY GARCÍA, Director General for Budget and Community Funds
- Mr Manuel AGUILAR CASTILLEJO, Director General for Financial Policy
- Mr Javier SERRA RECIO, Director of the Office for Budgetary Control and Efficiency

- **Parliament of the Autonomous Community of Castile-La Mancha**

- Mr Francisco GIL-ORTEGA RINCON, Vice Chair of the Parliament
- Ms Cesarea ARNEDO MEGIAS, First Secretary of the Parliament

Thursday, 7 June 2012 - Madrid

Meeting with the Spanish Senate

- Mr Francisco Manuel DE LA TORRE PRADOS, President, Committee of the Local Entities
- Mr José Fernanco MERINO MERCHÁN, Advisor to the Committee on Local Authorities
- Ms María FRANCO VICENTE DE VERA, Administrator for International Relations

Meeting with the National Court of Auditors

- Mr Manuel NUNEZ PEREZ, President
- Mr Gregorio CUÑADO AUSÍN, Technical Director of the Presidency
- Ms Pilar COBOS RUÍZ DE ALDANA, Technical Deputy Director – Legal Advisor of the Presidency
- Mr Ulpiano SAN MARTÍN CASTELLANOS, Technical Director of the Audit Department of Autonomous Communities
- Ms Ana PUY FERNÁNDEZ, Technical Director of the Audit Department of Local Governments
- Mr Jerónimo HERNANDEZ CASARES, interpreter from the Spanish SAI

Meeting with Mr Rafael RIBÓ I MASSÓ, the Catalan Ombudsman

Meeting with the Constitutional Court of Spain

- Mr Pascual SALA SANCHEZ, President
- Mr Pablo PÉREZ TREMPS, Judge
- Mr Ignacio BORRAJO, Counselor and Head of the Court’s Studies, Library and Documentation Department
- Mr Juan VILLAR ESCUDERO, Head of the President’s Office

Meeting with the Spanish Congress

- Ms María del Carmen QUINTANILLA BARBA, President of the Equality Committee
- Mr José Ignacio SÁNCHEZ AMOR, Speaker of the Constitutional Committee

Friday, 8 June 2012 - Madrid

Meeting with the City of Madrid

- Mr Cayetano PRIETO ROMERO, Director General for Organisation and Legal Structure
  Ms. María de los Ángeles ROMERA AYLLÓN, Director General for Financial Policy

Meeting with the Community of Madrid

- Mr Borja COROMINAS FISAS, General Director for European Affairs and Cooperation with the State
- Mr Miguel Ángel MUÑOZ MARTÍNEZ, Deputy General Director for European Affairs
- Mr José MIGUEL MUÑOZ, Chief of Cabinet of the President of the Assembly
- A member of the Department of Economy and Treasury of Regional Government

Meeting with the Audit Chamber of the Community of Madrid

- Mr Emilio GARCÍA HORCAJO, Responsible for the Report of Audit on Local Authorities
- Mr Marino DÍAZ GUERRA, Responsible for the Report on the analysis of the obligation of reporting on the accounts of the Madrid Public Sector

Meeting with the Foundation on Democracy and Local Governance (FDGL)

- Mr Carles ROSSINYOL I VIDAL, Vice President of the Foundation, Deputy President for Finances and Internal Resources of the Province of Barcelona and elected representative of the City of Sabadell

APPENDIX 2 – PROGRAMME OF THE CONGRESS MONITORING VISIT TO SPAIN – PART 2 (14 JANUARY 2013)

CONGRESS MONITORING VISIT TO SPAIN
Madrid, 14 January 2012

PROGRAMME

Congress delegation

Rapporteurs

Mr Marc COOLS	Co-rapporteur on local democracy Chamber of Local Authorities, ILDG[44] Member of the Monitoring Committee of the Congress Alderman of Uccle (Belgium)
Mr Leen VERBEEK	Co-rapporteur on regional democracy Chamber of Regions, SOC[1] Member of the Monitoring Committee of the Congress Queen's Commissioner of the Province of Flevoland (Netherlands)

Expert

Mr Francesco MERLONI	Consultant (Italy) President of the Group of Independent Experts on the European Charter of Local Self-Government of the Congress

Congress Secretariat:

Ms Stéphanie POIREL	Secretary to the Monitoring Committee of the Congress E-mail: stephanie.poirel@coe.int

Consecutive interpretation: Spanish and English

[44] ILDG: Independent Liberal and Democratic Group of the Congress
SOC: Socialist Group of the Congress

Monday, 14 January 2013

Meeting with Mr Antonio Germán BETETA BARREDA, Secretary of State for Public Administration

Ms Rosana NAVARRO, Secretary General for Autonomous and Local Coordination
Mr Juan Ignacio ROMERO, Director General for the Coordination of Competencies with the Autonomous communities and local authorities
Ms Paqui SANTONJA, Special Adviser, Directorate General for Autonomous and Local Cooperation

Meeting with Mr Iñigo DE LA SERNA HERNÁIZ, President of the Spanish Federation of Municipalities and Provinces (FEMP)

Mr Angel FERNANDEZ DIAS, Secretary General of the FEMP

Meeting with the Members of the Spanish National Delegation to the Congress

Ms Ana Isabel ALOS LOPEZ, Mayor of Huesca, Head of the Spanish delegation to the Congress
Mr Inigo DE LA SERNA HERNAIZ, Mayor of Santander
Mrs Ibone BENGOETXEA OTAOLEA, Deputy Mayor of Bilbao and President of Association of Basque Municipalities (EUDEL)
Mr Antonio GONZALEZ TEROL, Member of the Madrid Assembly
Mrs Carolina HERNANDEZ TORRES, Member of the Parliament of Castile-La Mancha
Mr Pedro PUY FRAGA, Spokesman of the Parliament of Galicia
Mrs Pilar VARGAS MAESTRE, Member of the Parliament of Extremadura

Ms Mar ZABALA MANDARAS, Secretary General of EUDEL