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Local and regional democracy in Sweden

Monitoring Committee

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Recommendation 357 (2014)	2
Explanatory memorandum	4

Summary

This is the second report concerning the monitoring of local and regional democracy in Sweden since 2005. It expresses satisfaction that Sweden, which has a powerful local government system, on the whole complies with the provisions of the European Charter of Local Self-Government. It welcomes the newly established principle of proportionality in the Swedish constitution which aims to ensure that restrictions in local self-government do not exceed what is necessary, and the granting of regional development competences to many county councils. It underlines the fact that Sweden has managed to shelter the local budgets from any cuts during the economic crisis. The report notes, on the other hand, that local authorities in Sweden also face challenges which need to be solved through close consultation between local and central authorities on subjects that include the limitations put on local authorities by detailed state regulations, the problems created by the non-indexation of state grants and by the insufficient involvement of local authorities in the estimation of cost implications of new state legislation concerning the local level.

The report recommends that Swedish authorities introduce the principle of subsidiarity into the Swedish constitution, in addition to the principle of proportionality, to ensure that the division of powers between the State and the local authorities remains in conformity with the Charter, in law and in practice. It invites the Swedish authorities to index state grants and to link them to demographic changes, and to allow local authorities stronger involvement in the estimation of cost implications of new state legislation concerning them. It encourages the authorities to consider the benefits of setting up a formalised system of consultation which is regulated by law. Finally, it invites the authorities to ratify Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (ETS No. 206).

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: Members not belonging to a political group of the Congress

Local and regional democracy in Sweden

RECOMMENDATION 357 (2014)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 (2011)² relating to the Congress, which provides that one of the aims of the Congress shall be “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

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

c. Congress Resolution 299 (2010), which provides that the Congress will use the Council of Europe Reference Framework for Regional Democracy in its monitoring activities, as well as the reply given by the Committee of Ministers to Congress Recommendation 282 (2010) [CM/Cong (2011) Rec 282 final] encouraging the governments of member states to take account of the aforementioned Reference Framework in their policies and reforms;

d. the explanatory memorandum on local and regional democracy in Sweden [CG(26)12FINAL].

2. The Congress makes reference to the fact that:

a. Sweden signed the European Charter of Local Self-Government on 4 October 1988 and ratified it on 29 August 1989 with a declaration that it intends to confine the scope of application to the following local and regional authorities: municipalities (*Kommuner*) and county councils (*Landstings*);

b. Sweden signed the Additional Protocol on the right to participate in the affairs of a local authority (CETS No. 207) on 5 May 2010 with entry into force on 1 June 2012;

c. the Monitoring Committee instructed Luzette Wagenaar-Kroon (Netherlands, L, EPP/CCE) and Gudrun Mosler-Törnström (Austria, R, SOC) to prepare and submit to the Congress, as rapporteurs, the report on local and regional democracy in Sweden;

d. the Congress delegation carried out a monitoring visit to Sweden from 23 to 25 September 2013³ visiting Stockholm, Norköpping and Flen.

3. The Congress wishes to thank the Permanent Representation of Sweden to the Council of Europe and the Swedish authorities at central, county council and local levels, the Swedish Association of Local and Regional Authorities (SALAR), experts as well as other interlocutors for their valuable co-operation at different stages of the monitoring procedure and the information conveyed to the delegation.

4. The Congress notes with satisfaction that:

a. constitutional reform took place in 2011 amending the Instrument of Government which is one of the four fundamental laws that make up the Constitution, adding a new chapter under the title “Local Authorities” (Chapter 14), introducing the principle of proportionality, with the aim of strengthening the constitutional protection of local self-government;

2. Debated and adopted by the Congress on 27 March 2014, 3rd sitting (see Document [CG\(26\)12FINAL](#) explanatory memorandum), rapporteurs: Luzette WAGENAAR-KROON, Netherlands (L,EPP/CCE) and Gudrun MOSLER-TÖRNSTRÖM, Austria (R, SOC).

3. In their work, the rapporteurs were assisted by Professor Renate KICKER, consultant, who is a member of the Group of Independent Experts on the European Charter of Local Self-Government, and by Sedef CANKOÇAK, co-secretary of the Monitoring Committee of the Congress.

b. the local authorities manage a very substantial share of public affairs (approximately 75 %) and the association representing local and county authorities, SALAR, is a strong partner of the national authorities with regard to local government affairs;

c. the equalisation system has been changed and the application of the funding principle has been given clearer guidelines as recommended by the Congress in 2005;

d. three county councils and one municipality have taken over additional responsibilities in regional development and that, from 2015 on, six additional county councils will take over similar responsibilities.

5. The Congress draws attention to issues that require further improvement for an optimal functioning of local government including the:

a. lack of a mention of the principle of subsidiarity in the Swedish Constitution, although the newly introduced Chapter 14 of the Instrument of Government has strengthened the role and scope of local authorities and, in any event, de facto, a very high percentage of public services are carried out at the local level;

b. significantly increased amount of detailed state regulations for local level activities, for example in such areas as working conditions, health care, education and public procurement, which carry the risk of infringement on local affairs and the need for an improvement in the consultation procedure in order avoid such infringements;

c. non-indexation of state grants. Although these are frequently revised, they remain nominally fixed. Therefore a decrease (in value) occurs in real terms through inflation. This situation could be addressed by adopting firm rules on the indexation of grants which, in turn, would strengthen the long-term planning conditions for local authorities and county councils;

d. insufficient involvement of local authorities in the estimation of cost implications of new state legislation concerning the local level, which sometimes leads to situations where the national authorities do not take into account all related cost factors.

6. In the light of this, the Congress asks the Committee of Ministers to invite the Swedish authorities to:

a. strengthen the principle of subsidiarity, which requires that tasks that can be performed at the local level should be performed at the local level, by ensuring a consistent application of the recently introduced principle of proportionality, laid down in the Constitution;

b. set up a formal consultation procedure that would allow the local authorities and their representative association to make input into all decisions taken at State level which might limit local authorities' autonomy;

c. invite the Government to consider the local authorities' demand for indexation of state grants and linking them to demographic changes;

d. ensure the stronger involvement of the local authorities in the estimation of cost implications of any new state legislation that is to be implemented at local level;

e. grant more county councils responsibility in regional development, by extending this competence to all elected county councils, and to make use of the Council of Europe Reference Framework for Regional Democracy as a guideline in this respect;

f. invite the government to ratify Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (ETS No. 206).

Local and regional democracy in Sweden

EXPLANATORY MEMORANDUM

Table of contents

1.	INTRODUCTION: AIM AND SCOPE OF THE VISIT, TERMS OF REFERENCE.....	5
2.	Political AND ECONOMIC context.....	6
2.1.	International context and relations with neighbours.....	6
2.2.	Internal political context.....	7
2.3.	Previous report and recommendations.....	8
3.	Honouring of Obligations and Commitments.....	8
3.1.	Constitutional developments.....	8
3.2.	Implementation of the Charter: Areas of concern.....	9
3.2.1.	The principle of local self-government.....	9
3.2.2.	Detailed state regulations limiting the autonomy of local self-government.....	10
3.2.3.	A formalised consultation procedure.....	10
3.2.4.	Financial resources and financial equalisation.....	11
3.3.	Status of the capital city and direct election of mayors.....	12
3.4.	The structure of local government in Sweden.....	12
3.5.	County Councils with responsibilities for regional planning.....	13
4.	Analysis of the situation of local and regional democracy on an article by article basis.....	14
4.1.	Articles 2 and 3: Principle and concept of local self-government.....	14
4.2.	Article 4: Scope of local self-government.....	15
4.3.	Article 5: Protection of boundaries.....	16
4.4.	Article 6: Administrative structures.....	17
4.5.	Articles 7 and 8: Exercising responsibilities and government supervision.....	17
4.6.	Article 9: Financial resources.....	18
4.7.	Article 10: Right to associate.....	20
4.8.	Article 11: Legal protection of local governments.....	20
5.	THE REFERENCE FRAMEWORK FOR REGIONAL DEMOCRACY.....	21
6.	CONCLUSIONS.....	21
	Appendix – Programme of the Congress monitoring visit to Sweden (23-25 September 2013).....	

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

1. In accordance with Article 2 of Statutory Resolution CM/Res (2011)2 of the Committee of Ministers, the Congress of Local and Regional Authorities of the Council of Europe (hereafter "the Congress") regularly prepares reports on the state of local and regional democracy in the member states and candidate countries.

2. Sweden joined the Council of Europe on 5 May 1949. It signed the European Charter for Local Self-Government (ETS No. 122, hereafter "the Charter") on 4 October 1988 and ratified it on 29 August 1989, with entry into force on 1 December 1989. In accordance with Article 13 of the Charter, Sweden made a declaration that it intends to confine the scope of application to the following local and regional authorities: municipalities (*Kommuner*) and county councils (*Landstings*).

3. Sweden ratified the Additional Protocol on the right to participate in the affairs of a local authority (CETS No. 207) on 5 May 2010 with entry into force on 1 June 2012. It ratified the European Charter for Regional and Minority Languages (CETS No. 148) on 9 February 2000 with entry into force on 1 June 2000. The European Landscape Convention (CETS No. 176) was ratified on 5 January 2011 and entered into force on 1 June 2011.

4. Sweden also ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities and Authorities (CETS No. 106) on 23 April 1981 (with entry into force on 22 December 1982). The Additional Protocol to the same Convention (CETS No. 159) was ratified by Sweden on 9 November 1995 with entry into force on 1 December 1998.⁴ Sweden has not ratified Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) ETS No. 206).

5. The previous monitoring report on local and regional democracy in Sweden was adopted by the Congress at its 12th Plenary Session in June 2005. The monitoring mission undertaken by the Congress delegation from 23 to 25 September 2013 followed up on the Congress Recommendation 163 (2005).

6. The present report relates to the visits of the Congress to Sweden from 28 to 29 September 2013, to monitor the situation of local and regional democracy in this country on the basis of the Charter. The Monitoring Committee appointed Luzette Wagenaar-Kroon (Netherlands, EPP/CCE) and Gudrun Mosler-Törnström (Austria, R, SOC) as co-rapporteurs on local and regional democracy, respectively. They were assisted by Professor Renate Kicker, consultant, member of the Group of Independent Experts on the European Charter of Local Self-Government and Sedef Cankoçak from the Secretariat of the Congress.

7. The Congress delegation met with national authorities including the Minister for Public Administration and Housing, the Minister for Financial Markets and for Local Government, the Chair and members of the Parliamentary Committee on the Constitution, the President of the Supreme Administrative Court, the Parliamentary Ombudsman. There were meetings with the Swedish Association of Local and Regional Authorities (SALAR), with the mayors of Stockholm City and Flen and the Vice-Chair of Norköpping City Council, as well as with specialists on issues of local government. The detailed programmes are appended to the present report.

8. The co-rapporteurs wish to thank the Permanent Representation of Sweden to the Council of Europe and all those whom it met during the visit for their readiness to assist the delegation and for the information they so willingly supplied. It also thanks the Swedish delegation to the Congress and SALAR for contributing to the organisation and smooth running of the visit.

4. A declaration was made in accordance with Article 8 of this protocol to the effect that Sweden accepts only the application of Article 4. Protocol No. 2 to the same Convention (CETS No. 169) which was ratified by Sweden on 5 May 1998 with entry into force on 1 February 2001. A declaration was made with reference to Article 6 and 4 of this protocol confirming the application of Article 4 of the Additional Protocol only.

2. POLITICAL AND ECONOMIC CONTEXT

9. Sweden is among that rare group of countries in Europe which weathered the global financial and economic crisis that hit the continent in 2008, in spite of a large public sector and high welfare state expenditure. The fact that it enjoyed a budget surplus when the crisis happened certainly helped.

10. According to an assessment made in 2011⁵ of the impact the economic downturn on local government had across Europe for the years 2008–2010, the Scandinavian group of countries, including Sweden, Denmark and Finland, have managed to shelter their large local budgets from any cuts, though their central budgets dropped in the first year in all three cases. The increase of local government debt as a percentage of the GDP in the crisis period was only 2 % as compared to the European Union (EU) average increase of 14 %.

11. The Economy Report on Swedish municipal and county council finances from October 2012 reveals that the Swedish economy, which has succeeded comparatively well in withstanding the debt crisis, is now entering a period of slow-down. However, this has not affected the real tax bases in the local government sector in 2012, with a net income in municipalities and county councils of 18 billion Swedish Krona (SEK), largely due to non-recurring revenue items. In 2013, net income will fall back to 9 billion SEK and it is expected to remain at that level until 2016.

International context and relations with neighbours

12. Local authorities in Sweden have a long history in cooperating with communities in other countries, especially in the Nordic region. These international activities have been extended to the Baltic Sea region and the rest of Europe. As a result of Swedish EU membership, municipalities and county councils have intensified these activities and participate in several programmes for territorial cooperation, financially supported by EU funds.

13. For background information, it must be noted that Sweden is a member of the Nordic Council, an inter-parliamentary forum for co-operation, since 1952,⁶ and took over its presidency on 1 January 2013. It is also a member of the Arctic Council⁷ since 1991, which it has led between 2011 and 2013, promoting a new international agreement aimed at protecting Arctic waters from oil spills. Sweden has been an EU member since 1995. Its relations with NATO function under the Partnership for Peace framework which Sweden joined in 1994.

14. Sweden also participates in cross-border cooperation programmes with non-EU countries through the European Neighbourhood and Partnership Instrument. It is one of the initiators and driving forces in EU's Eastern Partnership⁸ activities and contributes substantial funds to cooperation programmes (around 12% of the total EU contribution, i.e. around 90 million USD in 2013 as compared to EU's 760 million USD).

15. Under the Swedish presidency in autumn 2009, the European Council adopted the Baltic Sea Strategy which is the first of its kind for a macro region in the EU. It involves a new strategic working method for cooperation among a number of neighbouring countries to meet region-specific challenges.

16. With the Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on European Grouping of Territorial cooperation (EGTC), the legal basis for trans-border local and regional cooperation projects has been significantly developed. The EGTC enjoys the legal capacity accorded to legal entities at national level. It would appear that the Nordic countries have not yet recognised the potential of this law since no projects have so far been planned in this area.

5. At the 7th session of the Council of Europe Conference of Ministers responsible for local and regional government held on 3-4 November 2011, in Kyiv (Ukraine).

6. Denmark, Finland, Iceland, Norway and Sweden as well as the Faroe Islands, Greenland and Åland Island.

7. Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden and the United States.

8. [Armenia](#), [Azerbaijan](#), [Belarus](#), [Georgia](#), [Moldova](#) and [Ukraine](#).

Internal political context

i) Government structures

17. The Kingdom of Sweden is a constitutional monarchy. It has a population of 9 600 000, of which 85% is urban based. Its capital Stockholm houses approximately 22% of its population (900 000 in the municipal, 1 400 000 in the urban and 2 155 000 in the metropolitan areas). The official language is Swedish and the minority languages spoken are Yiddish, Romany Chib, Sami, Finnish and Mäenkieli (Tornedal Finnish). The predominant religion is Lutheran Christian (87%). Its head of State is King Carl XVI Gustav since 1973.

18. Sweden has a unicameral parliament (*Riksdag*) with 349 seats. Members are elected by popular vote on a proportional representation basis to serve four-year terms. In the 2010–2014 period, eight parties are represented in the *Riksdag* (see below para. 21-23). Voting age is 18.

19. The Government of the Kingdom of Sweden (shortly called *Regeringen*) is headed by the Prime Minister. The incumbent is Fredrik Reinfeldt, chairman of the Moderate Party, since 2006. The Prime Minister is appointed and dismissed by the Speaker of the Parliament and, in turn, appoints the ministers. The ministries focus on policy making while state-controlled government agencies carry out the policies of the government. The ministers do not bear individual ministerial responsibility for the performance of the agencies within their portfolio, the heads of government agencies reporting directly to the Government.

20. As for the judicial system, it includes first instance and appellate general courts (a three tier structure of district courts, appeal courts and the Supreme Court) and administrative courts (a three tier structure of administrative courts, appeal courts and Supreme Administrative Court) as well as specialised courts that handle cases such as land and environment, immigration, labour, markets, and patents.

ii) Elections

21. Since the elections of 2006 and 2010, the centre-right Alliance (Liberal People's Party, the Centre Party, Moderate Party and Christian Democrats) has been in government. In September 2010 they won the elections with 49.27% of the votes and 173 seats) against the centre-left coalition consisting of Social Democrats, the Green Party and the Left Party, which obtained 43.60% and 156 seats. The voter turnout was 84.63%.

22. In 2010 the Alliance lost its absolute majority in the parliament that it had enjoyed since 2006 but continued to govern as a minority government with Fredrik Reinfeldt from the Moderate Party as Prime Minister.

23. Another result of the 2010 elections was the entry of the Sweden Democrats, a far-right party which had received 5.70% of the votes to Parliament.

24. As regards elections at municipal level for 20 county councils and 290 municipalities, which took place alongside the general elections in 2010, Social Democrats obtained 30.7% of the votes against 30.1% for the Moderate Party, Liberal People's Party (7.1%) and the Greens (7.3%). The Centre Party got 6.6%, Left Party 5.6% and the Christian Democrats 5.6% of the votes, while the Sweden Democrats received 5.7% and the others 1.4%. The voter turnout for the local elections was slightly lower than for the national elections, namely 81.6% for the municipal council elections (+2.2% compared to 2006) and 81% for county council elections (+2.2% compared to 2006).

25. About half of the municipalities and half of the county councils have a political majority that differs from that of the Swedish parliament. There are a number of majorities at local level, for example where local parties are involved. The Congress delegation was informed that conflicts and tensions that may occur rarely have links to political party divisions.

26. The number of women elected representatives in local councils has risen steadily. This is partly due to the voluntary introduction of internal quotas by the political parties for women's representation. The ratio of women in local government councils is 43 %, and in county councils 47.5% of the total number of councillors. It is worth noting that in the 2010 elections, there was a slight drop in the

number of women represented at national level, from 47 % to 45 %, apparently due to the fact that the right-wing parties mostly had male candidates.⁹

27. The next elections at national and local level will take place in September 2014.

Previous report and recommendations

28. The Congress established in its previous report and recommendation 163 (2005) on local and regional democracy in Sweden, that a strong local government involvement in public affairs and a system of local autonomy exist in Sweden, which apply many of the principles of local self-government as contained in the European Charter of Local Self-Government.

29. The following remaining problems were, however, identified:

- The constitutional foundation for local self-government in the Instrument of Government was considered as ambiguous, allowing for different interpretations. The Congress recommended strengthening the constitutional foundation of local self-government (Article 2).

- Increasing detailed regulations at State level on local issues (Article 4) were considered as interference in local affairs and infringing the autonomy and full and exclusive power of local authorities. The Congress recommended that the central government give local authorities a greater margin of manoeuvre to carry out their duties.

- Furthermore, the right of local authorities to be consulted (Article 4 point 6) in the planning and decision-making process for all matters which concern them, as well as the legal protection of local self-government (Article 11) were addressed in the report. The question of introducing a formalised system of consultation as well as a system of redress, to which local authorities could refer breaches of the principle of local self-government were raised in the Congress' recommendation.

- As concerns the financial resources of local authorities (Article 9) the report emphasised that the Swedish Constitution guarantees that local authorities may levy taxes to enable them to perform their tasks and that the "funding principle" stipulates that the central government, when assigning new tasks by law on local authorities, must provide the initial funds to carry out these tasks. The State grant system, where a shift from general grants to earmarked grants was identified, and the equalisation scheme, which was considered as conducive to reduce local authorities' discretion over their own levied taxes, were addressed in the recommendation.

- Finally, the Congress recommended the Swedish authorities to encourage regional democracy.

30. In the following chapter, the current situation of local and regional self-government in Sweden will be briefly assessed in the light of the previous report and the recommendations, before continuing with a detailed analysis of the implementation of the Charter on an article by article basis.

3. HONOURING OF OBLIGATIONS AND COMMITMENTS

Constitutional developments

31. Following the recommendation made by the Congress after the 2005 monitoring visit to "instruct the Committee on the Revision of the Constitution to consider how the role of local self-government can be strengthened in the Constitution", a constitutional reform took place in 2011. The Instrument of Government¹⁰ which is one of the four fundamental laws that make up the Constitution was amended by a new Chapter 14 under the title "Local Authorities" with the aim to strengthen the constitutional protection of local self-government. The majority of the provisions of Chapter 14 were formerly found in other Chapters of the Instrument of Government or were established practice. Nevertheless, bringing the relevant provisions together in a chapter of its own helps strengthen local self-government.

9. <http://jacobchristensen.name/2010/09/25/sweden-developments-in-womens-representation/>

10. The other three are the Act of Succession, the Freedom of Press Act and the Fundamental Law on Freedom of Expression.

32. Article 1 of Chapter 14 establishes that Sweden has municipalities and county councils that are vested with a decision making power which is exercised by elected assemblies. In the revised Article 2, local authorities are made responsible for local and regional matters of public interest, which is thus inscribed into the Constitution. Article 2 further clarifies that any activities assigned to local authorities by law are based on the principle of local self-government.

33. Article 3 of Chapter 14 is a new provision and lays down the principle of proportionality in relation to any restrictions in local self-government which should not exceed what is necessary with regard to the purpose of the restriction. This principle requires that the government and the *Riksdag* be restrictive and offer particular reasons whenever they wish to limit the scope of local self-government. Essential for the application of the principle of proportionality is the requirement for judicial preview by the Council of Legislation (*Lagradet*) before any *Riksdag* decision on legislation is taken, whether they imply a new commitment for the local authorities or involve interference in the local authorities' power of taxation (RF 8:21, paragraph 2, point 5).

34. The tax levying power of local authorities as well as the equalisation principle is laid down in the Constitution (Articles 4 and 5 of Chapter 14).

35. Any regulations which may lead to changes in territorial division ("the division of the realm into local authorities") have to be laid down in law (Article 6 of Chapter 14).

Implementation of the Charter: Areas of concern

36. Several changes can be noted in Sweden since the Congress Recommendation 163 of 2005. The constitutional protection for local self-government has been strengthened, the equalisation system has been changed and the application of the funding principle has been given clearer guidelines. However, there remain certain areas of concern which will be addressed below.

3.2.1. The principle of local self-government

37. Local self-government as laid down in the Charter is to be realised with reference to two general principles: subsidiarity, which requires the devolution of responsibilities to those authorities who are closest to the citizens and self-governance, which provides that those authorities must be allowed autonomy in implementing their responsibilities.

38. The Swedish Constitution does not expressly mention the principle of subsidiarity. Article 2 of the new Chapter 14 of the Instrument of Government states, however, that the local authorities are responsible for local and regional matters of public interest based on the principle of local self-government and that detailed rules on this are laid down in the law. Article 3 thereof introduces the principle of "proportionality", which applies in legislative matters concerning local self-government. This principle stipulates that any restriction in local self-government should not exceed what is necessary with regard to the purpose of the restriction. This regulation meets to some extent the provision in the Charter, according to which "allocation of responsibilities to another authority should weigh up the extent and nature of the task and the requirements of efficiency and economy" (Article 4 para. 3 of the Charter). This is taken into account by another new provision in the Instrument of Government (Chapter 8, Article 21) according to which, the opinion of the Council of Legislation should be obtained by the *Riksdag* before taking a decision on "any act of law relating to local taxation or an act of law involving the obligations of local authorities".

39. The question arises as to whether the newly adopted principle of proportionality is understood as a legal foundation of the principle of subsidiarity in its meaning that all tasks that can be performed at a local level should be performed at the local level. From the meetings of the Congress' delegation with Swedish authorities, it appeared that the principle of proportionality is clearly not understood as a general principle that local tasks should be performed at local level (in the sense of a principle of subsidiarity). It is interpreted as meaning that tasks should be performed at the most appropriate level and the decision of what constitutes the most appropriate level is taken at the State level. It was confirmed by the interlocutors that the State may give or take away tasks from the local level and apply the principle of proportionality more in terms of checks and balances. Local authorities complained about a centralising trend and the fact that they are not formally involved in the interpretation and application of the principle of proportionality, underlining the lack of a formalised procedure (the Government's reply to this is that local authorities are always involved in the legislation

process even if there is no formal representational structure). The Council of Legislation has already touched upon the principle of proportionality in a limited number of legislative acts. The Swedish Agency for Public Management has developed guidelines for how the principle of proportionality is to be taken into consideration in the legislative process.

3.2.2. *Detailed state regulations limiting the autonomy of local self-government*

40. The principle of autonomy, as the second pillar to guarantee local self-government, appears to be compromised by a significantly increased amount of detailed state regulations for local level activities. Such regulations are found in the social sector, on working conditions and health care and especially in the regulations for the educational system and on public procurement. New legislation adopted since 2005 indicate that the problem of detailed state regulations limiting local self-government which had been addressed in the previous Congress report remains critical. For example, the Act (2010:879) on Public Utility Municipal Housing Companies restricts local government's capacity to manage and develop housing companies. Nation-wide common technical building regulations which are currently being planned to facilitate the construction of more and cheaper housing will limit local authorities if they wish to impose restrictions that go beyond the national standards.

41. The Government's position on this is that if the law on housing companies implies any encroachment on municipal self-government, on the one hand it is a minor one that takes into account the public utility role of such companies, and on the other, it is a serious improvement on pre-2006 legislation. As regards the technical regulations, apparently these are based on the results of an independent public inquiry that is presently being examined within the Cabinet Offices.

42. Regulations issued by different state authorities may even impose contradictory and conflicting obligations for the implementation of local affairs. For example, the Act (1993:387) concerning Support and Services for Disabled Persons contains a number of provisions that impose obligations at local level to provide services to disabled individuals with full respect for individual freedom. At the same time, the Work Environment Act (1977:1160) as carried out by the Work Environment Authority has provisions that may be contradictory to the rights of an individual person.

43. Another source for limiting local authority autonomy is the implementation of EU-legislation. In recent legislative activities the government has dwelt much more on the limitations than on the opportunities provided by new EU-legislation. An example is the Public Procurement Act (2007:1091) where the Swedish legislator has decided on thresholds that are lower than the EU law requires.

3.2.3. *A formalised consultation procedure*

44. The Swedish Association of Local Authorities and Regions (SALAR) and other discussion partners at local level whom the delegation met, criticised the lack of a "formalised" procedure of consultation and underlined the need for an improvement in the consultation procedure that goes beyond the current system of referrals. This would involve a procedure that is regulated by legislation and which makes clear that the consultations include concrete proposals on reforms on the one hand and legislative developments within the municipal sector, especially on self-government and local finances on the other, with particular emphasis on the different phases of the budget process.

45. SALAR had made a proposal to develop such a system already in 2005. The Committee on Public Responsibilities in 2007 came forward with a concept to establish a system of consultations between central and local government. The proposal was to set up a formal body, the Delegation for Consultations between the State and Municipalities, consisting of members from both the government and the municipal sector. It was proposed that the consultation should cover three principal areas: The relationship between the national and local levels; municipal finances and funding, and municipal legislation. SALAR supported this proposal of the Committee, but the government has stated that it considers the present consultation forms to be sufficient (Prop. 2009/10:175, p. 85-86).

46. The Government, in their comments, defend the advantages provided by a flexible system of consultation. From this perspective, Article 2, Chapter 7 of the Instrument of Government obliges the Government to request information and opinions from public authorities (or individuals) concerned, as necessary. This means that whenever local authorities are concerned by a proposed legislation, they are to be part of a public referral. They are also part of state commissions and reference groups which allows for varying opinions to be expressed.

3.2.4. *Financial resources and financial equalisation*

47. The so-called “funding principle” has been designed to provide adequate funding for each new task assigned to the local level (concomitant financing). A local authority representative called this a “burning issue” and illustrated the problem as follows: Decisions are taken at the national level with financial implications that limit financial autonomy at local level. It is the different calculation of cost implications at the State level that obviously leads to financial problems at the local level. In fact, the national level does look into the costs and does provide funding according to the funding principle but it does not always look into all related cost factors.

48. The new legislation concerning secondary school education was mentioned by various interlocutors as an example. To start with, funds were provided by the state level; however, the fact that the newly reformed secondary education system had to run alongside the old school system simultaneously was not taken into account and its cost implications were not calculated by the State. Interlocutors underlined that the local level was much better equipped to calculate the costs that accompany the new reform than the national level. An early involvement of the local level would have provided for a more accurate cost implication planning.

49. Another example was given concerning a change in the unemployment insurance system which has led to a dramatic change in the costs. This was foreseen by the local authorities but not by the State. The cost estimation carried out at local level was much higher but was not accepted by the State. The actual costs of the reform turned out to be as high as estimated by the local level, with the consequence that these higher costs were not refunded by the State. The Act concerning support and service for persons with certain functional impairments and the reception of refugees at local level were mentioned as two more examples where the funding principle did not cover the costs arising for local authorities.

50. One other issue that has been raised frequently in the context of the financial situation of local authorities was the question of indexing State grants (to the evolution of inflation, demography etc.). Several levels of issues were underlined. First of all, state grants are nominally fixed which means that, in inflationary periods, they decrease in real terms. To counter the effects of such a decrease, they are revised quite often in an ad hoc manner. These interventions are a source of difficulty for local authorities and county councils as they have a negative effect on long-term planning conditions. Secondly, in addition to being nominally fixed, the state grants also suffer from not being linked to demographic changes. And finally, the question of efficiency of earmarked state grants arises. The management thereof carries with it a risk of increased bureaucracy and thereby increased costs without any benefit for the users. With firm rules on indexation, the long-term planning conditions for local authorities and county councils would be strengthened.

51. The procedure for implementing the equalisation principle has been modified in the light of the recommendations made by the Congress in 2005. It appears that the local level is in general satisfied with the new equalisation system. However, the calculation models are complex and the criteria chosen are permanently adapted. This is guided by the ambition to take into account the factors that affect the (varying) circumstances of different municipalities. For example, as of 2014, the percentage of children per capita in the local population will be taken into consideration when deciding the budget and the grants given to the local level.

52. A problem with the cost equalisation system that was mentioned is that it takes too long to modify according to the changes over time in the respective need differences of municipalities and county councils. As an example, the delegation heard from the representatives of the City of Stockholm that the current tax equalisation system does not do enough to promote economic growth and does not cover the substantial investment expenditures of a growing region, such as for infrastructure. Another problem is the timing of the decision of the Parliament. The changes in the cost equalisation system for the year 2014 will not be decided until December 2013 which makes the budgetary planning for the local level difficult.

Status of the capital city and direct election of mayors

53. According to the Local Government Act the capital city has no particular status. However, according to its Chapter 2, section 6, the Stockholm County¹¹ Council is empowered to administer certain business normally left to municipal authorities, for example the coordination of regional planning and transport in the metropolitan area.

54. In its comment on a paper published by the government committee on the responsibilities of different levels of government in 2007, the City of Stockholm emphasised the importance of accepting asymmetry in social organisation, which takes into account the unique circumstances of each different region. The distribution of responsibilities between Stockholm County's municipalities, the county council and the county administrative board was said to be essentially effective.

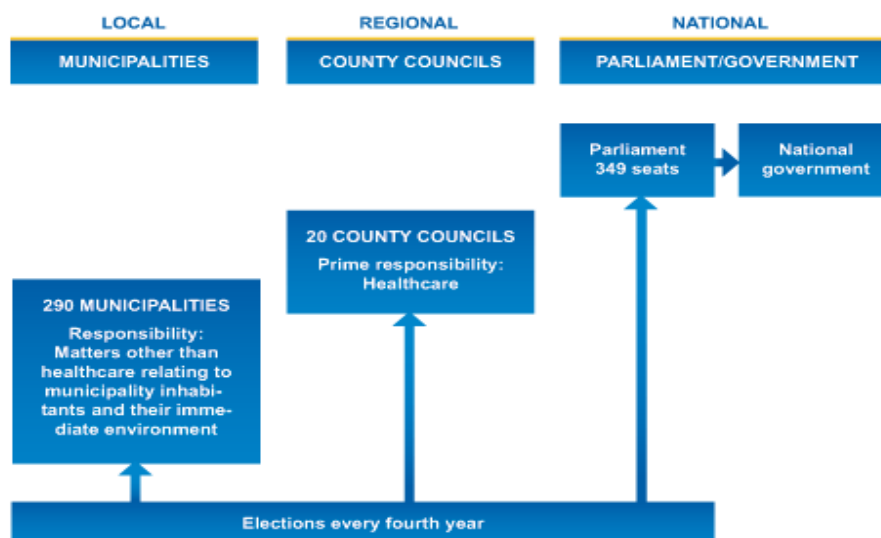
55. A specific feature of Stockholm's administrative structure is the existence of a number of Commissioners (*Borgarråd*) under the Executive Board, a political institution which no other municipality has. The function of these Commissioners, who form the Council of Mayors (the Mayor and twelve Vice-Mayors), corresponds to that of the Municipal Commissioner found in other Swedish municipalities. The Mayor, like the Vice-Mayors, is appointed by the City Council.

56. The question as to whether the Mayor, as well as the chairpersons of the executive committees in other municipalities should be directly elected was answered in the affirmative by the mayor of the city of Stockholm who supports this idea. Other interlocutors did not see any need to change the system or favoured the solution taken in the Norwegian system, which provides for an individual and discretionary decision to opt for the direct election of the mayor at local level.

The structure of local government in Sweden

57. According to Article 7 of the Instrument of Government, Sweden has local authorities at local and regional level. There are 290 self-governing municipalities (*Kommuner*) and 20 county councils (*Landsting*). Three counties and one municipality, Gotland, have taken over additional responsibilities. From 2015 on, six additional counties will take over regional development responsibility. However, the county councils or regions are not to be considered as medium-tier level of administration. There is no hierarchical subordination of municipalities under county councils/regions. They are on the same level with different geographical extensions and complementary tasks.

The three branches within the Swedish government¹²



11. Stockholm County has 26 municipalities. It must be kept in mind that it also has more than 2.1 million residents (more than one fifth of the country's population) and a population growth of just over 37 000 people in 2011, which is more than half of the growth for the whole country during the year.

12. This chart is taken from "Levels of local democracy in Sweden", published by the Swedish Association of Local Authorities and Regions.

58. Municipal and county council assemblies are the highest decision-making bodies at the local and regional levels. Councillors are nominated by a political party and elected in municipal and county council elections which take place on the same day as elections to the national Parliament. The electoral system is proportional and provides that the composition of the municipal and county council assemblies corresponds to the composition and the political views of the electorate. A member of the Municipal Council must reside in the community and must be at least 18 years old. There are no citizenship requirements to be a councillor; however, foreigners need to have a permanent residence permit valid for the last three years before the election. Council sizes range from 21 members in municipalities with fewer than 8,000 residents to 101 members in the City of Stockholm and 149 members in the Stockholm County Council.

59. According to the law, municipalities are responsible for the following sectors:¹³

- Social services;
- Childcare and preschools;
- Elderly care;
- Support for the physically and intellectually disabled;
- Primary and secondary education;
- Planning and building issues;
- Health and environmental protection;
- Refuse collection and waste management;
- Emergency services and emergency preparedness;
- Water and sewerage.

60. At the local level, municipalities are authorised to issue local regulations which are mandatory within its borders in areas such as public order, traffic, planning, tax levels etc.

61. In addition to their special commitments it is acknowledged that local government bodies have a free sector in which they can take care of their own matters and that in this area there is scope for a local right for initiative. The right of initiative is closely linked to the right of local authorities to levy taxes.

Such activities on a voluntary basis are for example:

- Leisure activities;
- Cultural activities, apart from libraries which are a statutory responsibility;
- Housing (but local authorities have the responsibility to plan housing provisions);
- Energy;
- Industrial and commercial services.

62. The county councils are mainly responsible for health care and public transport. As mentioned earlier, some county councils have taken over regional development responsibilities from the County Administrative Boards (CABs; *Länsstyrelsen*), which are state agencies at county level. There are also Regional cooperation councils as another (legally weaker) form of planning on infrastructure that goes beyond county councils borders.

63. As regards the remuneration of councillors, apparently there are great differences between the salaries of the approximately 14.000 elected representatives. It must be noted that most councillors are not full time politicians. However, Sweden allows local authorities a significant margin of freedom to determine the remuneration of local representatives. Each municipality operates its own pay scale (in approximate relation to the number of inhabitants and/or number of municipal councillors). The development of the average national rate of pay is generally taken into account. Councillors benefit from social insurance system.

County Councils with responsibilities for regional planning

64. Sweden has 21 counties¹⁴ but 20 county councils because Gotland, although it has county council responsibilities and is also tasked with regional development, is a municipality. Since the previous Congress monitoring in 2005, three of these counties, namely Västra Götaland, Skåne and Halland and the municipality of Gotland have gained a permanent responsibility for regional

13. See SALAR, Levels of local democracy in Sweden.

14. Blekinge, Dalarna, Gävleborg, Gotland, Halland, Jämtland, Jonköping, Kalmar, Kronoberg, Norrbotten, Örebro, Östergötland, Skåne, Södermanland, Uppsala, Värmland, Västerbotten, Västernorrland, Västmanland, Västra Götaland

development issues and call themselves “regions”. On 24 September, the day when the delegation met him, the Minister for Public Administration and Housing Stefan Attefall, published a statement whereby six out of nine other county councils, which had applied to take over responsibility for regional development as from 2015, would be granted this task. Thus, in addition to the existing four, six more county councils, namely Jonköping, Gävleborg, Östergötland, Örebro, Kronoberg and Jämtland, will have larger responsibilities.

65. The reason these counties were able to obtain a larger mandate was that they already had municipal cooperation bodies. The three county councils whose applications were not accepted (Norrbotten, Västernorrland and Västmanland) are counties where the regional administrative boards are responsible for regional development issues and this will remain the case for the future. This decision not to accept the application of the three counties was immediately and strongly criticised by SALAR through a statement to the effect that, at regional level, elected assemblies should be responsible for managing and coordinating regional development and not state-appointed regional administrative boards. It creates better democratic credentials and provides a strong mandate for vigorous and effective work for regional growth.

66. In the context of the decision to give more responsibilities to six counties, it should be noted that none of these six county councils changed their boundaries or merged into a larger geographical area. One of the councillors the delegation interviewed considered this development as a lost opportunity to reorganise the boundaries of municipal councils and also for inter-municipal cooperation in an enlarged geographical area which could then become a region. The rapporteurs have the impression that there is strong political support at local level for merging county councils into fewer entities, a development which has so far not been facilitated but rather opposed by the Government. Nevertheless, in several counties, political decisions have already been taken to go ahead and apply for more responsibilities as of 2019.

4. ANALYSIS OF THE SITUATION OF LOCAL AND REGIONAL DEMOCRACY ON AN ARTICLE BY ARTICLE BASIS

Articles 2 and 3: Principle and concept of local self-government

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

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

Article 3 – Concept of local self-government

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

67. The requirement of a constitutional foundation for local self-government had been fulfilled in Sweden before the constitutional revision took place in 2011. The Instrument of Government from 1974 stipulated already in its Chapter I, Article 1 that Swedish democracy is realised through a representative and parliamentary form of government and through local self-government. With the introduction of Chapter 14 in the Instrument of Government, the constitutional protection of local self-government has been further strengthened. Article 2 of Chapter 14 clarifies that not only activities of local authorities in their own sphere of competences but also delegated competences in special legislation are based on the principle of local self-government.

68. The Local Government Act (1991) is the main legislative text governing local authorities in Sweden which are the municipalities and county councils. The local authorities manage a very substantial share of public affairs (approximately 75 %) which raises the question of whether they have full autonomy as foreseen by Article 3 para. 1 of the Charter, which stipulates that they should manage a substantial share of public affairs “under their own responsibility”. More and more detailed state regulations and “rights” legislation (see paras. 40 - 43 above) intervene in local authorities’ regulation of their own affairs. The Government, however, maintains that the state regulations are not detailed to such an extent that they infringe on the autonomy of local authorities.

69. The requirement of Article 3 para.2 of the Charter is fully implemented in Sweden. Municipalities and county councils are governed by elected assemblies, the municipal council and the county council respectively. These bodies are elected in local elections, which is also based in the Constitution (RF 14:1) The executive bodies, the municipal executive board and the county council executive board are appointed by the assemblies to whom they are responsible.

70. Sweden complies with the provisions of Articles 2 and 3 of the Charter.

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.

71. According to Article 2 of the new Chapter 14 of the Local Government Act, local authorities are responsible for local and regional matters of public interest based on the principle of local self-government. The basic powers and responsibilities of local authorities are laid down in the Local Government Act or in special laws issued by the Parliament. 75 % of the public services have been devolved to the local level by law.

72. The question of whether the principle of subsidiarity is applied to the division of powers and competences in law and in practice in conformity with the Charter has been addressed already in the general part of this report (see 3.2.1). There is no specific provision in the Swedish law which stipulates that local tasks should be performed at local level. Article 3 of Chapter 14 of the Swedish constitution introduces the principle of proportionality. It stipulates that all new legislation that may affect local self-government should be examined, to ensure that the reasons for the intended regulation justify the possible intrusion into local self-government that the regulation would entail.

73. A proportionality control mechanism was established by extending the mandate of the Council of Legislation (*Lagradet*) to scrutinise any act of law involving the obligations of local authorities. (Chapter 8, Article 21). Whether this newly established principle of proportionality will provide a legal safeguard to protect the principle of local self-government will mainly depend on its application in practice and its interpretation by the Council of Legislation. However, to counter trends to centralise local tasks, a constitutionally guaranteed principle of subsidiarity seems to be the best solution.

74. The powers of local authorities should be “full and exclusive” and local authorities should be allowed discretion in adapting their exercise to local conditions. Detailed state regulations in Sweden limit the autonomy of local authorities increasingly (see the problem described in more detail under headings 3.2 and 4.1).

75. In the Swedish practice, consultation between central and local authorities in the planning and the decision-making process is carried out through participation in the preparation of legislation in government committees and through the consultation procedure following the publication of reports by such committees. This type of consultation is well established and based on informal procedures. There is the so-called “referral system” before a bill of legislation is presented to the Parliament. This procedure is based on a government act which stipulates referrals to a group of interlocutors including municipalities and county councils. This need not always be SALAR. It can be a specific county

council or municipal council depending on the subject matter. The time frame for submitting an opinion was described as “problematic” by some interlocutors because they are sometimes very short. A new regulation has been added in the Instrument of Government (RF 7:2) stipulating that, in preparing government business, the necessary information and opinions from the public authorities concerned should be requested. It is true that this provision now puts on the Government the obligation to ask for information from local authorities. However, although it codifies the previous practice, it does not regulate a time frame for contributions from the local level, which has often been too short in the past. The Government contends that the time frame is normally three months and can be prolonged. The rapporteurs take note that in practice deadlines can vary and consider that a revision of the legislation to provide for an adequate period of time for the consultation process would be appropriate.

76. Another aspect of possible infringements on local self-government through EU legislation needs to be considered in Sweden. With the entry into force of the Lisbon Treaty, national parliaments have been given the task of carrying out subsidiarity checks. Currently, there is no legislation in force which provides for a formalised procedure to give communes and county councils the possibility to participate in the assessment of whether EU legislation is in breach of the principle of subsidiarity or whether it infringes on local self-government. The Government has considered the existing form of consultations between central government and local authorities to be sufficient (Govt. bill 2009/10:175). The *Riksdag* carried out an inquiry into how subsidiarity checks were to be carried out under the Treaty and came to the same conclusion as the Government, i.e. that no formal procedure was necessary.

77. In the rapporteurs’ opinion Swedish law and practice in general complies with the provisions of Article 4. As regards the issue of detailed state regulations limiting the autonomy of local authorities, the rapporteurs consider that there is a risk of infringement (see paras.40-43) which can however be overcome through close consultation between local and national authorities.

Article 5: Protection of boundaries

Article 5 – Protection of local authority boundaries

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

78. Principles and procedures for changes in local authority boundaries are laid down in the Act Amending the Division of Sweden into Municipalities and County Councils (1979:11 reprinted as 1988:198). The Government has the power to decide on alterations of municipal boundaries through amalgamation or division of two or more municipalities or by incorporation of a part of a municipality into another.

79. This being said, the municipalities concerned need to be consulted and special account must be taken of their opinions. The law also requires that the public be consulted before deciding on a change of municipal subdivisions. This is usually done through a referendum, but can also be done through an opinion poll. If the government wants to change a municipality’s boundary, against the wishes of its inhabitants, the legislation requires that the government specify the reasons. However, ultimately the municipalities have no veto rights whereby they could oppose a decision to change their boundaries.

80. The municipal as well as the county councils may seek support from their electorate to express their adverse opinion against planned changes in boundaries by means of a referendum, an opinion poll or similar procedures as regulated in the Local Government Act and the Municipal Referenda Act (1994:692). It must be noted however that the outcome of a referendum or opinion poll is not binding on the Government. It is only indicative but can have a certain weight in terms of political impact.

81. Provided the required consultation complies with the “in due time and in an appropriate way” stipulations of the Charter, Sweden is in compliance with Article 5 of the Charter.

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

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

82. The Local Government Act prescribes in Chapter 3 that each municipality and each county should have one decision-making body, which is the elected assembly. The Municipal Assembly as well as the County Council Assembly must appoint the Executive Committee (*Kommunstyrelsen/landstingsstyrelsen*). Otherwise local authorities may determine their own internal administrative structures and appoint any other Standing Committees (*Nämnder*) needed, in addition to the Executive Committee, for the discharge of their duties.

83. These provisions, giving local authorities the required freedom to determine their own internal administrative structures and their functions and resulting in a great variation of institutional structures at local level, are in compliance with the Charter.

Articles 7 and 8: Exercising responsibilities and government supervision**Article 7 – Conditions under which responsibilities at local level are exercised**

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

Article 8 – Administrative supervision of local authorities' activities

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

84. Under the Local Government Act (Chapter 9) an audit scheme was established at the municipal as well as at county council level. The auditors are appointed by the council and are independent in reviewing the activities of the board, committees and the administration. "The auditors inspect whether the activities have been carried out in an appropriate and financially satisfactory way and whether the accounts are true and fair and whether the internal checks carried out within the committees are sufficient" (section 9). The elected auditors are assisted by experts and carry out their function according to generally accepted auditing standards called "good auditing".

85. The County Administrative Boards (CABs) and central government agencies are commissioned by the government to supervise municipalities and county councils for compliance with the laws and regulations. The areas where oversight is exercised extensively are environmental protection, social services and education. Different monitoring instruments are used such as evaluations, inspections, bench-marking systems and follow-ups.

86. Given the above, the Swedish supervision system can be said to be in compliance with the Charter.

87. The rapporteurs recall, nevertheless, that concerns were raised by some interlocutors, notably on the trend towards harmonisation of standards regarding the services provided by local authorities,

to the detriment of justifiable local differences. The concern here is that too strict a harmonisation may restrict local autonomy. In addition, according to SALAR central government agencies such as the National Board of Health and Welfare and the Swedish Work Environment Authority, within the framework of their supervision, provide regulations which can be contradictory and in certain cases also reach beyond their competence.

Article 9: Financial resources

Article 9 – Financial resources of local authorities

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

88. What was already guaranteed in the Swedish Constitution (Chapter 1, Section 7/2) before 2011 has now been shifted to the new Chapter 14 in the Instrument of Government which stipulates in its Article 4 that local authorities may levy taxes for the management of their affairs.

89. The majority of local revenues (about 70 %) are derived from local taxes. Municipalities and county councils have the same tax base, namely taxable incomes from salaries, wages and taxable transfer payments (for example pensions, payments from health insurances and unemployment benefits). Each local authority currently decides independently its own tax rate. However, the national Parliament has the power to decide the level of local taxation (tax capping), a provision which is not in operation now but could be activated at any point in future.

90. SALAR has informed the rapporteurs that the Congress recommendation inviting the authorities to clarify the local authority's power of taxation has not been met but SALAR does not find it necessary to bring the question back to the table. In the 1990s and during the financial crisis, the Parliament decided to make temporary restrictions on the right of municipalities to raise their rate. The Council of Legislation criticized the then government's proposal and questioned whether it was compatible with the Constitution. The introduction of the principle of proportionality in 2011 might pave the way in favour of local autonomy in this field.

91. State grants constitute about 16 % of the revenues, are nominally fixed and decrease in real terms through inflation. They are also not linked to demographic changes. In 2012 general government grants amounted to approximately 82 billion SEK and grants for specific purposes to approximately 49 billion SEK (Govt. communication 2012/13:102 p.11). In 2012 earmarked grants corresponded to an average 6% of revenue for the municipalities and 9 % for the county councils. Further revenues are fees charged for some of the services provided at local level.

92. The so-called "funding principle" is applied since 1993 in relation to new compulsory state regulations concerning the municipal sector. Financial compensation for mandatory tasks entails an impact assessment ex ante, is calculated as a lump sum and is allocated through general or earmarked grants to the municipal sector on a per capita basis. In the Budget Bill for 2014, the

Government recognised the problem that regulations by independent government bodies that do not entail new legislation are not covered by the funding principle and that there is a need for guidelines on how to apply this principle.

93. Local authorities in Sweden are currently not affected by the economic crisis and the global budgetary situation was described as rather good which is due to temporary circumstances.¹⁵ Net income in municipalities and county councils has reached the record level of 18 billion SEK in 2012, largely due to non-recurring revenue items. When AFA Försäkring insurance company returns the premiums (for health insurance) paid in 2005 and 2006 in December 2013. Net income will fall back to approximately 10 billion SEK in 2013 and it is expected to remain at that level until 2016, given the successive rises in government grants and an increase of 0.40 SEK in local government taxes compared to their present level.

94. The financial equalisation procedure is now based in the Constitution through Article 5 in the new Chapter 14 which stipulates that “according to law, local authorities may be obliged to contribute to costs incurred by other local authorities if necessary to achieve an equal financial base”. Changes were made, as of 1 January 2005 based on a 2003 report, combining the equalisation system and the government grants system into a mainly state-funded equalisation system. The system consists of five parts: 1) income equalisation, 2) cost equalisation, 3) a structural grant, 4) a transitional grant and 5) an adjustment grant/charge. The changes meant that significantly fewer municipalities and county councils became net contributors to the system. In 2013, eight municipalities are paying a charge of a total of 1.6 billion SEK and one county is paying a charge of 0.2 billion SEK. The State grants amounts to approximately 86 billion SEK. The Swedish Agency for Public Management is mandated to investigate and to follow up local government financial equalisation systems and to continuously propose updates.

95. A special cost equalisation system was introduced for municipalities under the Act concerning Support and Services for Persons with Certain Functional Impairments in 2004 and changed with effect from 2009. The reason given for setting up an equalisation system was that there are major cost differences between municipalities and equalisation is needed to put all municipalities on an equal financial footing to provide services under the Act. Similarly, a special government grant provides for cost equalisation separate from the regular equalisation system for county councils for paying for pharmaceutical benefits.

96. The rapporteurs would like to mention here the situation in Flen, where costs have gone up in social welfare particularly due to the arrival of a proportionally high number of refugees increasing integration costs (2000 refugees in a town of 16 000 inhabitants). They heard from the councillors and the Mayor that the financial equalisation system does not take into account the issue of refugee influx sufficiently. They claimed that Flen, which has a decreasing population and high unemployment rate (among youth and migrants), suffers from the lack of centrally coordinated planning of refugee integration which creates problems for a small town the size of Flen, with increased social security, education and housing costs, without adequate and rapid compensation from the State.

97. The local government tax base is to some extent sensible to fluctuations in employment and economic growth. A bill on local government balancing funds, applicable as of 1 January 2013, strengthens the possibilities for municipalities and county councils to create municipal equalization reserves. They can now accumulate profit equalisation reserves within the framework of their own capital to cover deficits that may arise as effects of cyclical variations or regression. The rule applies retroactively, so profits can be set aside from 2010 onwards, although the actual decision cannot be made until the end of the 2013 fiscal year.

98. Sweden is a rare case among European countries in that the majority of local revenues are derived from local taxes and that with a ratio of 70%. It is also a rare case in that local authorities have not been affected by the economic and financial crisis at all. The financial equalisation system is enshrined in the law and works well.

99. The rapporteurs are of the opinion that, all in all, Sweden complies with the provisions of Article 9 of the Charter.

15. The following data are taken from the Economy Report on Swedish municipal and county council finances – October 2012, Swedish Association of Local Authorities.

Article 10: Right to associate**Article 10 – Local authorities' right to associate**

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

100. For cooperation at local level the national legislation offers two formal solutions under public law: Statutory Joint Authorities or a Joint Local Government Committee. Municipalities and county councils may also cooperate in the form of companies under private law.

101. A Committee with representatives from the parties in the *Riksdag* has recently been given the task of looking into the current forms of local government cooperation and, where necessary, proposing new forms of cooperation (Swedish Government Official Reports (SOU) 2012:30). The committee considered that cooperation is an important tool for municipalities and county councils today and considered that the need for local government cooperation could be expected to increase in future. As for the forms of cooperation, no need was seen to create new public law bodies for cooperation. What was requested was more flexible and less formalised cooperation models.

102. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests is fully guaranteed in Sweden. The Swedish Association of Local Authorities and Regions (SALAR) is both an employers' organisation and a body that represents and advocates for local government in Sweden. Although membership is voluntary all of Sweden's municipalities, counties and regions belong to this association.

103. The rapporteurs consider that Sweden complies with the provisions of Article 10 of the Charter.

Article 11: Legal protection of local governments**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.

104. In its 2005 recommendation the Congress suggested that there should be a system of redress, referred to in the Constitution, to which the local authorities could turn in case of breaches of the principle of local self-government. It was proposed to establish a Constitutional Court which does not exist in Sweden. The question of whether a constitutional court should be established has been the subject of an inquiry and was dismissed by the parties in the Parliament (SOU 2008:125). It was argued, that there is a relatively broad political consensus in Sweden that such a court should not be established. Another proposal was to strengthen the position of local authorities' vis-à-vis the Parliament by creating a parliamentary committee on local self-government. This proposal has been implemented by giving the Council of Legislation (*Lagradet*) the mandate to submit opinions on legislative proposals which impose an obligation on municipalities or county councils (Chapter 8, sections 20-22). The Council provides a way to ensure quality in new legislation. It also provides a window of opportunity to highlight conflicting interests between national and local levels in the application of the principle of proportionality.

105. The local authorities can turn to the Supreme Administrative Court if and when they consider that the funding principle has not been adhered to by laws attributing tasks to the local level. When a local government goes to court to challenge state legislation because of its financial implications, the court has to balance the individual rights of citizens or persons in general (foreigners) and the independence of local government. For example, the Supreme Administrative Court recently ruled in favour of a municipality in a number of cases concerning the right to compensation for costs for refugees (Judgment of 23 April 2013, case 3303-12).

106. Local authorities therefore have a right of appeal, which leads the rapporteurs to conclude that, from this point of view, Sweden complies with the provisions of Article 11 of the Charter.

5. THE REFERENCE FRAMEWORK FOR REGIONAL DEMOCRACY

107. Congress had recommended that the situation in the counties of Västra Götaland and Skåne, where regional development tasks were delegated to counties, be made permanent. This recommendation was carried out in 2011, with the extension of this exercise to Halland and the municipality of Gotland.

108. A further nine county councils have decided to apply to take over the regional development possibilities as from 2015 (the next mandatory period). As a precondition for giving permanent responsibility for regional development to county councils, the government demanded that these initiatives be based on strong local and regional initiatives. A large majority in each of the nine county councils has endorsed the call for the decision which was also endorsed by most municipalities in these counties. In a statement made on 24 September 2013, Minister Attefal announced that the government would not accept the applications of three of the counties in which the County Administrative Boards are responsible for regional development. However, in those counties where this task was carried out by regional federation bodies, the government accepts its transfer to county councils. The Committee on Regional State Administration' proposal to allow all county councils to take over responsibility for regional development if they apply for it and have support from local authorities has not been adopted by the Government.

109. In the amended Instrument of Government 2011, the title of county council was changed to "municipality at regional level". The Instrument of Government further stipulates that county councils handle regional affairs on a local self-government basis, which clearly states county councils' territorial responsibility. In the light of the developments depicted above, there will be ten county councils in Sweden as of 2015 with responsibility to handle additional tasks. This is an important development although, concretely speaking, the change can be considered a limited one, in the sense that it includes only additional regional development competences but no change in status.

110. All in all, the rapporteurs consider that, from the perspective of the Reference Framework for Regional Democracy, the delegation of regional development tasks to county councils, i.e. elected bodies, is a positive development, since elected regional councils with power of taxation are closer to the citizen and may strengthen regional development. However, there remains an asymmetrical situation: in seven of the remaining 11 county councils, the competence of regional development stays with municipal coordination bodies, and in four of them it stays with the regional administrative boards which are state agencies. The concept of merging regional administrative boards to create a larger geographical area for planning regional development, a process which should have been followed also by the county councils taking over regional development responsibilities, has been discussed but not implemented.

111. In Sweden's national reform programme 2012 it is stated that local and regional support for the targets and intentions of Europe 2020 Strategy and for regional and local development in Sweden, is crucial for the successful implementation of the strategy. In 2007, the Government established a national forum for regional competitiveness, entrepreneurship and employment to further develop the dialogue between the national, regional and local levels on regional growth issues. In 2011 the Government instructed the county administrative boards responsible for regional growth, and it also offered the county councils and municipal consultation bodies with similar responsibilities, to submit an identification of each county's priorities in future regional growth process from 2014.

6. CONCLUSIONS

112. In the aftermath of the financial crisis, described as a "perfect storm" in the Eurozone, the Swedish local government sector has been compared to "a rock in the stormy sea" in the 2012 Economy Report on Swedish Municipal and County Council Finances. This means Sweden has done well to protect local governments, the main providers of social services in the country, from debt.

113. Sweden's local authorities are however facing certain challenges. These include demographic changes (aging population) and increasing global competition (growing citizen demands). The wish to provide uniform responses to these changes, supported by European Union legislation requiring

nation-wide application, lead to a reaction at national level that manifests itself in the adoption of more state regulations limiting local responsibilities and autonomy.

114. The newly established principle of proportionality in the Swedish constitution (Chapter 14 Article 3 of the Act of Government), which applies in legislative matters concerning local self-government, strengthens its constitutional foundation. Whether this principle will serve as a basis to protect local self-government will depend on its interpretation and practical application. So far, the Council of Legislation (*Lagradet*) in exercising its function as a proportionality control mechanism has only touched upon the principle of proportionality in a limited number of legislative acts. In these respective statements only vague indications were given on how to balance national and the local interests in order to promote enhanced legislation. Critical voices therefore maintain that the procedure of implementing the principle of proportionality needs to be developed. The rapporteurs suggest that principles and guidelines for how the principle of proportionality is to be taken into consideration in the legislative process be developed in accordance with the local authorities. However, to ensure the division of powers and competences between the State and the local level governments in conformity with the Charter, in law and in practice, it is proposed to introduce the principle of subsidiarity in the Swedish constitution.

115. The Congress, building upon its Recommendation 171 on Consultation of Local Authorities: Implementation of the European Charter of Local Self-Government, stressed in its report on “The rights of local authorities to be consulted by other levels of government”¹⁶ that the right of local authorities to be consulted is a core principle of local democracy. In Sweden the procedure of consultation with local authorities in the legislative process and on questions of redistribution and allocation of financial resources has been strengthened in the Instrument of Government 2011. The system of referrals provides opportunity for local authority opinions to be expressed but remains relatively informal. The rapporteurs have taken note of the reticence of the national authorities to formalise procedure in this regard. The Government believes in the efficiency of a flexible system which allows differences of opinion between SALAR and individual councils to reach the Government. It also appears that the idea of a legally regulated formalised consultation process is considered by some to be contrary to the tradition of the Swedish political culture. Aware of a necessity for a balanced approach on this issue, the rapporteurs would invite the government to keep the debate open on the proposal made by the former Committee on Public Responsibilities on a formalised system of consultation which is regulated by law, in order to establish the arguments for and against, particularly in the current context of increased responsibilities for some counties.

116. As concerns EU legislation, which may infringe upon local government competences, an inquiry was undertaken in the *Riksdag* (2008/9:URF2) on whether and how municipalities and county councils should become involved in the assessment of subsidiarity issues. The inquiry emphasised that the local authorities have an important role to play to identify possible subsidiarity problems. It was stated, that through contacts between the parties in the *Riksdag* with their municipal and regional party organisations and contacts between SALAR and parliamentary committees, concerns in relation to local self-government could be expressed. Neither the *Riksdag* nor the Government consider a formalised consultation procedure between the local level and the state level necessary, in order to assess whether EU legislation observes the principle of subsidiarity. The rapporteurs propose to include this specific task when considering a formalised consultation procedure between the different levels of government.

117. As regards the application of the “funding principle” the recommendation that local authorities be given mainly general grants in order to perform the tasks assigned to them has not been implemented. Since 2005, the proportion of earmarked state grants has risen from about 3 % to 6 % in the total revenues of municipalities and to 9% in the county councils. It is mostly the healthcare services (where regulations are issued at central level) that should be financed through earmarked grants. Local authorities indicate that there is a risk of increased bureaucracy causing increased costs without any benefit for the users. The use of earmarked grants in relation to services provided to foreigners was also considered to be inadequate (see, for example, a case brought before and adjudicated by the Supreme Administrative Court: Judgment of 23 April 2013, case 3303-12). The rapporteurs would invite the Government to take into account the Congress recommendation made in 2005 to replace earmarked grants by general grants so that local authorities can perform the tasks assigned to them.

16. 23rd Session, CG(23)11, 28 August 2012

118. General grants are nominally fixed and decrease in real term through inflation. They are revised quite often in an ad hoc manner. This implies that the long-term planning conditions for local authorities and county councils are difficult. In addition in the calculation of these grants demographic changes are not taken into consideration. The rapporteurs would invite Government to consider the local authorities' demand to index state grants and to link them to demographic changes.

119. A more efficient consultation process and a stronger involvement of the local level in the estimation of cost implications of new state legislation that is to be implemented at local level should be considered by the Government.

120. It appears that the reform of the equalisation system is in the main satisfying with (according to local authorities) some deficiencies: the complexity of the system, the timing of the decisions and the lack of speedy adaptation to changing circumstances. The rapporteurs invite the Government to look into these issues in consultation with the local authorities.

121. As regards tax capping, the possibility to impose restrictions on fiscal autonomy of local authorities was already addressed in the 2005 report and was followed by a recommendation to clarify this ambiguity. Given that this recommendation has not been implemented, the rapporteurs would like to bring it to the Government's attention once again.

122. A commission has been set up with the task to modernise the Local Government Act (*Kommunallagsöversynen*) in order to strengthen and clarify the system. However, looking closer at the directives given to the Commission (which has four representatives from municipalities, county councils and SALAR), it appears that there are few references that go in this direction. The rapporteurs consider that a review of the directives and giving the Commission a broader mandate would allow for proposals that may actually strengthen and clarify the system of local self-government in Sweden.

123. When it comes to regional level competences, positive developments have taken place since 2005, as there are now 10 county councils with an increased number of tasks in the field of regional development. However, the Government has preferred not to take on board the proposal to form larger and more powerful regions by merging several county councils. Given the local authorities' enthusiasm to take over these additional tasks as witnessed by applications from county councils, the rapporteurs consider that giving the responsibility for regional development to all elected county councils and encourage the merging of county councils to create larger geographical areas for regional development planning could be an interesting solution. The Reference Framework of Regional Democracy issued by the Congress and adopted by the Committee of Ministers can provide useful guidelines in this respect.

124. Sweden is also invited to ratify Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (ETS No. 206).

APPENDIX - Programme of the Congress monitoring visit to Sweden (23-25 September 2013)

**PROGRAMME OF THE CONGRESS MONITORING VISIT TO SWEDEN
Stockholm, Flen and Norrköping
(23 - 25 September 2013)**

Congress delegation:

Rapporteurs:

Mrs Luzette WAGENAAR-KROON Rapporteur on local democracy
Chamber of Local Authorities, EPP-CCE¹⁷
Member of the Monitoring Committee of the Congress,
Mayor of Waterland (Netherlands)

Mrs Gudrun MOSLER-TÖRNSTRÖM Rapporteur on regional democracy
Chamber of Regions, SOC
Member of the Monitoring Committee of the Congress,
Vice-President of the State Parliament of Salzburg
(Austria)

Expert:

Prof Renate KICKER Consultant, Member of the Group of Independent Experts
on the European Charter of Local Self-Government of the
Congress (Austria)

Congress Secretariat:

Ms Sedef CANKOÇAK Co-Secretary to the Monitoring Committee of the Congress

Interpreters: Ms Louise RATFORD & Ms Maria Hemph

Sunday, 22 September 2013, Stockholm

Arrival of the Congress Delegation

Monday, 23 September 2013, Stockholm

Meeting with the Head of the Swedish Delegation to the Congress

- **Mr Anders KNAPE**, Councillor of Karlstad and President of the Swedish Association of Local Authorities and Regions (SALAR)

17. L: Chamber of Local Authorities / R: Chamber of Regions
SOC: Socialist Group
EPP/CCE: European People's Party group

Meeting with the political leadership of SALAR, the SALAR Executive Committee and the Managing Director, Chairs and Vice Chairs of the SALAR Healthcare delegation and Committee on Social Policy:

- **Ms Carola GUNNARSSON**, Deputy Mayor of the City of Sala, member of the SALAR Executive Board and 3rd Vice President of SALAR
- **Mr Lennart GABRIELSSON**, Mayor of the City of Sollentuna, member of the SALAR Executive Board and 1st Vice President of SALAR
- **Mr Tomas RUDIN**, Vice Mayor of the City of Stockholm, alternate member of the SALAR Executive Board
- **Ms Marlene BURWICK**, Deputy Mayor of the City of Uppsala, President of the SALAR Committee on Social Policy

Meeting with the Swedish delegation to the Congress:

- **Mr Yoomi RENSTRÖM** (Socialist party), Mayor of Ovanåker, Vice Head of the Swedish Delegation to the Congress
- **Mr Ilmar REEPALU** (Socialist party), councillor of the City of Malmö, former Mayor of Malmö, member of the Swedish Delegation to the Congress, member of the SALAR Executive Board and 2nd Vice President of SALAR
- **Ms Ann BESKOW** (Socialist party), member of the Committee of Culture, Gothenburg
- **Mr Lars O. MOLIN** (Christian democratic party), Chair of the City Council of Örebro
- **Mr Raymond SVENSSON** (Center party), councillor Haninge Municipal Council
- **Mr Henrik HAMMAR** (Conservative party), Chairman, Örskälljunga Municipal Council
- **Ms Inger LINGE** (Conservative party), Chair, Stockholm County Council
- **Ms Eleonore PARK-EDSTRÖM**, Advisor to the President of SALAR
- **Mr Jerker STATTIN**, Head of Section, International Affairs
- **Ms Christina RYDBERG**, National Delegation Secretary
- **Mr Bo Per LARSSON**, Senior advisor, Department for Finance and Democracy
- **Ms Helena LINDE**, Legal Advisor

Meeting with the Mayor of Stockholm City

- **Mr Sten NORDIN**, Mayor and Chief of Executive Board
- **Mr Gunnar BJÖRKMAN**, Deputy CEO, City of Stockholm
- **Mrs Carolina PETTERSSON**, Head of the Mayors political office

Meeting with Mrs Margareta BJÖRK, Chairman of the Stockholm City Council

- **Mr Gunnar BJÖRKMAN**, Deputy CEO, City of Stockholm

Meeting with Mr Staffan MOBERG, Head of the Stockholm City Audit Office

Meeting with the Swedish Parliamentary Ombudsman Office:

- **Ms Lilian WIKLUND**, Parliamentary Ombudsman
- **Mr Carl-Gustaf TRYBLOM**, Head of division
- **Ms Lina FORZELIUS**, Head of division
- **Ms Åsa WIDMARK**, Head of division

Tuesday, 24 September 2013, Stockholm

Meeting at the Ministry of Finance:

- **Mr Peter NORMAN**, Minister for Financial Markets and for Local Government and State Owned Companies
- **Mr Erik THEDEÉN**, State Secretary on Local Government and State Owned Companies
- **Mr Johan KARLANDER**, Finance department
- **Ms Klara CEDERLUND**, Local Government Division
- **Ms Katerina SUNDBERG**, Local Government Division
- **Mr Henrik KÄLLSBO**, Local Government Division
- **Mr Hwan WILLEN**, Economic Affairs Department
- **Ms Susanna BERGMAN**, Economic Affairs Department

Working lunch with Experts (members of the GIE) and members of the Venice Commission:

- **Mr Anders LIDSTRÖM**, professor, University of Umeå
- **Mr Johan HIRSCHFELDT**, former President of Court of Appeal, member of the Venice Commission
- **Mr Olle LUNDIN**, professor, titular member of the GIE, University of Uppsala, Law department

Meeting at the Ministry of Health and Social Affairs:

- **Mr Stefan ATTEFALL**, Minister for Public Administration and Housing
- **Ms Ulrika HALL**, Department official
- **Mr Gustaf JOHNSSEN**, Department official
- **Mr Rickard FALKENDAL**, Department official
- **Ms Annika GOTTBORG**, Department official
- **Ms Katerina SUNDBERG**, Ministry of Finance, Local Government Division
- **Mr Henrik KÄLLSBO**, Ministry of Finance, Local Government Division
- **Ms Petra KJELLARSSON**, Press Secretary

Meeting at the Supreme Administrative Court of Sweden:

- **Mr Mats MELIN**, President of the Supreme Administrative Court of Sweden
- **Ms Petra JANSSON**, Judge Referee

Meeting with the Chair of the Committee on the Constitution of Swedish parliament (RIKSDAG)

- **Mr Peter ERIKSSON**, the Green Party, Chair of Committee on the Constitution
- **Mr Per-Ingvar JOHNSON**, the Centre Party
- **Mr Hans EKSTRÖM**, the Social Democratic Party

**Wednesday, 25 September 2013
Flen, Norrköping, Stockholm**

Meeting with the Mayor of Flen City and the City Councillors:

- **Mr Jan-Erik LARSSON**, Mayor of Flen City
- **Mr Thomas NORANDER**, Leader of the Opposition
- **Mr Lars RÅDH**, Chief Executive Officer

Meeting with the Norrköping Municipal Council:

- **Mr Olle VIKMÅNG**, 1st Vice Chair of Norrköping Municipal Council
- **Mr Pär HÖGLUND**, Chief Administrative Officer, Office of the Municipal Executive Board
- **Ms Helene STYRENIUS**, Strategic Development Officer, Office of the Municipal Executive Board
- **Ms Sara MEYER**, Coordinator International Affairs, Office of the Municipal Executive Board