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Local and regional democracy in Sweden

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EXPLANATORY MEMORANDUM

1. BACKGROUND TO REGIONAL AND LOCAL DEMOCRACY IN SWEDEN

1.1 The institutions of Local Government¹

1. Sweden is a unitary state with a history of strong local government involvement in public affairs. Local government has played an important role in the welfare state system with many responsibilities for the delivery of public services to citizens. Because of this important position in the welfare system, it has attracted local politicians of a high calibre. Swedish citizens have on the whole a positive view of Swedish local government and, partly because of the important policy and administrative responsibilities of the local authorities, there has been a high turnout in local elections, although this has been in some decline in recent years. The positive Swedish attitude to local government is also shared by the central government and parliament and Sweden signed and ratified the European Charter of Local Self-Government as early as 1989, just four years after its promulgation. The Instrument of Government (the Swedish Constitution), which came into force in January 1974, gives explicit recognition to the principle of local self-government and this has been further expanded in the Local Government Act (1991) which came into force in January 1992.

2. Sweden covers a vast area of around 450,000 square kilometres with a population of just over 9,000,000 people. The Instrument of Government (the Swedish Constitution) and also the Swedish Local Government Act, states that Sweden has municipalities and county councils. The constitution does not therefore recognise any further form of subnational government such as a region. Every county council comprises one county, failing express provisions to the contrary. There are 290 municipalities (*kommuner*) and 20 county councils (*landstingen*) which sometimes call themselves “regions”². The island municipality of Gotland, combines the functions of the county council and the municipality.

3. There are also 21 County Administrative Boards (CABs) that are a branch of the central administration and are headed by a state-appointed governor, with responsibilities mainly for economic planning and regional development. Their board members are, since 2003, appointed by the central government. The CABs are entrusted with paramount responsibility for co-ordinating activities at county level. They command a strategic view of relations between bodies at local, county and central levels and can therefore act as a connecting link between central and local authorities.

4. CABs have administrative duties in for example the following areas:

- civil defence and emergency and rescue services;
- social welfare and community care;
- communications;
- agriculture;
- fishing;
- gender equality;
- culture;
- planning and conservation of natural resources;

¹ The rapporteurs would like to thank Professor John Loughlin from Cardiff University for his valuable assistance in drawing up this report.

² The translation of “county” by “region” leads to some confusion as “regions” in the Italian or Spanish sense of the word do not exist in Sweden.

- nature conservation and environmental protection.

5. CABs are also responsible for ensuring that the county's development proceeds in such a way as to facilitate the achievement of national goals while taking account of specific regional conditions and requirements. Important elements of this task are the promotion of economic and other kinds of development in the county as well as the provision of information for government use on prevailing conditions, problems and opportunities in the region. This task entails co-ordination of the state's regional development measures on a number of fronts, for example, business, infrastructure, agriculture, forest and fishing. The task of actively promoting regional development calls for continual dialogue with other government agencies, the county's local authorities, county councils and other organisations.

6. Two county councils - Västra Götland and Skåne – also call themselves “regions” and differ from other county councils in that they have taken over planning and development responsibilities from the CABs on a trial basis (originally to last until 2002 but now extended to 2010). Their creation was preceded by the amalgamation of previously existing counties. They have taken over the health care functions of the amalgamated county councils³. Another development in recent years has been the creation of Regional Co-operation Councils (RCCs – *regionala samverkansorgan*). The RCCs are indirectly elected, drawing their members from county and municipal councils. Like the Västra Götland and Skåne, they, too, may take over some of the development and planning responsibilities from the CABs. In the Swedish system, there is no hierarchical relationship between the different levels of local government, that is, no one level can exercise control over any other. Furthermore, the two regions, constitutionally speaking, are no different from the other levels of local government and are regarded simply as larger county councils even if they have taken over, on a trial basis, some of the responsibilities of the CABs.

7. Local authorities in Sweden, but especially the municipalities, have a wide range of functions. Some of these are exclusive to the municipalities (all primary and secondary education, most social welfare functions, town planning, water and sewage, environmental protection, refuse collection, parks and open spaces). Others are shared with the county councils, the CABs and/or the central government (e.g. regional/spatial planning, some culture and leisure activities). The most important but also the most financially burdensome of these tasks are education and social welfare but constitutional laws give the local authorities the right to raise taxes to carry out these duties. There is, however, a division of labour between the different levels. Municipalities have a wide range of responsibilities in several policy fields, while county councils deal, almost exclusively with health care.

1.2 Local Finances

8. In 2001, the total expenditure of the central government amounted to 716 billions SEK (€79 billions), for the municipalities 421 billions SEK (€46.5 billions) and for the county councils was 177 billion SEK (ca. €19.3 billion). Taken together, then, the municipalities and county councils control almost the same amount of expenditure as the central state, which is an indicator of their importance in the political and administrative system.

³ During our visit, these two counties were sometimes referred to as « pilot regions » but, as the Minister of Finance and Local Government pointed out, it is simply that the planning and development functions of the CAB have been taken over on a “trial” basis. We deal with the question of regionalisation in a later section of the report.

9. The Swedish Constitution (Instrument of Government) guarantees that local authorities may levy taxes to enable them to perform their tasks (Chapter 1, Section 7 (2)). Local taxes are entirely in the form of a local income tax that is paid both to the municipalities and to the county councils. These taxes are the most important source of income for the local authorities and represent 67% of the total budget of the municipalities and 69% for the county councils. On average, Swedish citizens paid (in 2003) around 20.7% of the income to the municipality and 10.5% of their income tax to the county councils. In 2005, the average municipal tax rate is 20.84% and the average county council tax rate 10.76% with the highest combined tax rate 34.24% and the lowest 28.9%. Those who earn above 284,300 SEK (ca. €30,500) have to pay an additional 20% on the exceeding sum to the central state, while those earning above 430,000 SEK (ca. €46,000) likewise pay an extra 25%. Local authorities are free to set their own tax rates and, in 2003, the highest combined municipality and county council tax was 33.3% and the lowest was 28.9%. Most Swedes, approximately 85% of tax-payers, pay only the local income tax, while the remaining 15% pay income taxes to the central state as well.

10. Besides revenues raised through local taxation, local authorities also receive grants from the central state. These are divided into general grants and ear-marked grants. For the county councils, general grants come to 7% and ear-marked grants 14% of their total income. The main part of the ear-marked grants to the county councils is a specific grant covering the county councils' expenditures for pharmaceutical subsidies to households, a grant that the county councils have wished to be maintained as a specific grant at least in the foreseeable future. The county councils also collect fees paid by patients, which came to 3% and the sale of other services, which amounted to 7%. A few smaller sources of income amounted to 2%. With regard to the municipalities, general grants are 9% and ear-marked grants 3.2% of total income. Rates and charges are 8.2%.

11. The "Funding Principle" stipulates that, if the central government by law lays new tasks on the local authorities, the central government must provide the initial funds to carry out these tasks. There is no obligation on the part of Government to continue with the financial support in the successive years.

1.3 The Equalisation System

12. Significant changes have been made in the equalisation system from January 1 2005. The purpose of the equalisation system, is however, the same, that is to create conditions of equal opportunity for local authorities across Sweden. The new equalisation system consists of five segments: revenue equalisation; equalisation for spending needs (cost equalisation); a structural grant; a transitional grant; and a per capita "regulation" grant or fee.

13. The revenue equalisation has been changed from a horizontal equalisation to a mainly vertical equalisation, although still with a small horizontal component. Municipalities with a per capita tax base below 115% and county councils with a per capita tax base below 110% of the national average receive a revenue equalisation grant. Those with a per capita tax base above these levels have to pay a revenue equalisation fee to the central government. Since this fee only covers a small proportion of the revenue equalisation grant, the central government has to finance the main part of it, and is using the former general grant and to some extent previously ear-marked grants for this purpose.

14. The equalisation for spending needs or cost equalisation is maintained as a horizontal equalisation system, although some changes have been made. The cost equalisation is intended to equalise for costs relating to structural needs and cost differences due, for example, to differences in the age distribution of the population or to the fact that additional costs are incurred due to long distances in the local authorities concerned.

15. Some of the components in the cost equalisation system have been removed from the horizontal equalisation scheme. Instead, a new structural grant has been introduced, financed by the central government. This grant covers, for example, costs for the promotion of business and employment and costs related to low population density.

16. A transitional grant is aimed at dampening the income loss for some local authorities due to the changing of the equalisation system. The transitional grant will gradually be faded out during the years 2005-2010.

17. The total amount approved by the parliament (*Riksdag*) to the new equalisation system for 2005 amounts to 55.2 billion SEK, of which 42.6 billion SEK is directed to the municipalities and 12.6 billion SEK to the county councils. The per capita “regulation” fee is calculated as the residual between the appropriations made by the Riksdag and the net of the equalisation grants and fees, the structural grant and the transitional grant to the municipalities and county councils respectively ($42.6 - 44.6 = -2.0$; $12.6 - 14.1 = -1.5$). If the residual has a positive sign it is defined as a per capita “regulation” grant.

18. *The new equalisation system, 2005 (Billion SEK)*

	<i>Municipalities</i>	<i>County Councils</i>	<i>Total</i>
Revenue equalisation Grant	45.0	14.9	59.9
Revenue equalisation Fee	-3.4	-2.2	-5.6
Cost equalisation grant	4.6	1.2	5.8
Cost equalisation fee	-4.6	-1.2	-5.9
Structural grant	1.5	0.7	2.2
Transitional grant	1.5	0.6	2.2
Sum of above	44.6	14.1	58.7
“Regulation” fee	-2.0	-1.5	-3.5
Total	42.6	12.6	55.2

1.4 Swedish Local Government and the European Charter of Local Self-Government

19. It is clear that the Swedish tradition of local government is broadly in line with the spirit and provisions of the Charter. In Sweden, there is a long tradition that local self-government enhances democracy, effectiveness and efficiency in Swedish society. It is not surprising, therefore, that the Swedish parliament, with the full backing of the county councils and municipalities, should have ratified the Charter in 1989, just four years after its adoption. The Charter applies to the Swedish municipalities (*Kommuner*) as well as to the Swedish county councils (*Landsting*). Since the Instrument of Government (the Swedish Constitution), which

came into force in January 1974, gives explicit recognition to the principle of local self-government the government stated in its Governmental Bill on Approval of the European Charter of Local Self-government (1988/89) that existing Swedish legislation did not require any further amendments. The Local Government Act (1991), entailed the further reinforcement local autonomy in line with the Charter. The previous Swedish Local Government Act (from 1977 and even previous ones) was also founded on the principle that municipalities and county councils should have the largest possible freedom to govern and organise themselves.

20. More specifically, several key articles of the Charter correspond with Swedish legislation. Article 2 states that the principle of local self-government should be recognised in the constitution. Chapter 1, section 1 of the Swedish Instrument of Government grants such recognition. This was further reinforced by the Local Government Act (1991). Article 3 of the Charter states that local authorities have the right, 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. Both the Instrument of Government and the legislation on local government are based on these principles. Article 4, para. 6, requires that local authorities be consulted on all matters that directly concern them and the bill proposing approval of the Charter stated that the Swedish system was consistent with this. Article 6, recommends that local authorities should be able to determine their own internal administrative structures, was complied with when the Local Government Act (1991) abolished the requirement that there be specific committees.

21. Article 9 deals with local authorities' financial resources. It states (para.1) that local authorities shall be entitled, within national economic policy, to adequate financial resources, of which they may dispose freely within the framework of their powers. It also stipulates (para. 2) that their financial resources shall be commensurate with the responsibilities provided for by the constitution and the law. With regard to local government sources of revenue, these should be derived from local taxes and charges, which, within the limits of statute, they may determine themselves (para. 3) and should be sufficiently diversified and buoyant (para. 4). There should be a system of equalisation to protect financially weaker local authorities (para. 5). With regard to grants from central government, it is recommended that these should, as far as possible, not be earmarked and should not remove from local authorities the freedom of policy discretion (para. 7).

22. To some extent, the provision in the Instrument of Government that states that local authorities have the right to levy taxes corresponds to this principle. This was further strengthened in 1993, when the Swedish Parliament, in connection with the introduction of general government grants approved the Funding Principle, which states that the government must explain how a reform is to be financed if it involves new tasks for local authorities. If local authorities have no alternative but to finance the reform by higher taxes, the state must give them financial compensation.

23. In the light of these considerations, we acknowledge the efforts made by the Swedish national and local authorities to apply the principles underlying the Charter. Nevertheless, the local authorities themselves have called to the attention of the Congress a number of issues where they feel the principles are not being fully complied with. One danger is that the central authorities in Sweden, precisely because they have a strong tradition of local self-government, may feel that the Charter is being fully complied with in the present Constitution and

legislation. During our visit in October 2004, it was clear that the central authorities do not recognise that there is any problem with the implementation of the Charter in Sweden. Before examining these problems, it will be useful to place recent developments in the changing socio-economic context of Swedish government.

2. THE CHANGING CONTEXT OF SWEDISH LOCAL GOVERNMENT

24. The thirty-year economic boom, following the Second World War, together with moderate tax increases financed the Swedish model of the welfare state. When economic growth slowed in the 1970s, further expansion of the welfare state had to be financed by large tax increases. During the second half of the 1980s, favourable economic growth financed a further expansion of the welfare state. This came to an end with the crisis in the early 1990s, which affected Sweden particularly badly and resulted in a very large budget deficit. Two major structural reforms were introduced in the 1990s. The tax reform of 1991 reduced the high levels of taxation on income and capital. The defined benefit pension system was transformed to a sustainable defined contribution system in 1995. A programme of fiscal consolidation was introduced in 1994. This programme ran over several years and included both tax increases and cuts in welfare expenditure. The rather favourable economic development since the late 1990s, with low inflation and interest rates, has made it possible to revise most of the former cuts and even to introduce new reforms and tax cuts in the last few years.

25. As we have seen, local government plays a very important role in the delivery of welfare services as well as in the taxation system, since the main form of direct tax paid by most Swedes was the local income tax. Neither the position of the local authorities nor the dominance of the local income tax was questioned during the period of reforms in the 1990s. What was questioned, however, already in the 1980s, was the high level of central regulation of the local authorities' activities. The free commune experiment was an attempt to resolve this problem in the direction of greater local freedom and this principle was incorporated into the Local Government Act (1991).

26. In recent years, however, again economic constraints have been re-introduced partly as a result of the changing international financial scene, in which central governments are obliged to apply a strict fiscal orthodoxy (even countries outside the Eurozone, such as Sweden and the United Kingdom follow this approach). This means keeping a tight control over public finances and spending. To some extent, at least, it is the local authorities who are paying the price both financially and in terms of the lessening of their autonomy over policy areas and also local administration. Central governments and parliaments are interfering more in local affairs through both increased regulation and through fiscal control.

2.1 The Committee on Public Sector Responsibilities

27. The Swedish Government set up the Committee on Public Sector Responsibilities (*Ansvarskommittén*) to examine the division of responsibilities between different levels of government in order to respond to some of the challenges outlined above. The Committee produced its report entitled "Innovation capacity for sustainable welfare" (*Utvecklingskraft för hållbar välfärd*, Stockholm: Official Government Reports – SOU, 2003:123). The Committee recommended that the Government's ambition should be to provide an equivalent high level of public services through a system of public administration that has a high level of

democratic legitimacy and closeness to citizens. This should be done by following three strategies:

- a) a strategy for clarifying the division of responsibilities between different levels of the administrative system (where multi-level governance occurs) in cases where it is impossible or inappropriate to concentrate responsibility at a single level, and for enhancing innovation capacity;
- b) a strategy for enhanced innovation capacity at local government level, building on a clear division of responsibilities between local and central government levels;
- c) a strategy for enhanced innovation capacity at central government level, comprising intersectoral development of central government services and national level governance.

28. The Committee proposed that the following specific matters should be given special priority in the continued enquiry:

- a) the overall task of local government, including more far-reaching co-operation at local government level;
- b) the design of the regional system of public administration;
- c) the framework for governance and supervision by the Government and Riksdag (Parliament);
- d) country-wide equivalence in the provision of welfare services and the legal regulation of individual rights;
- e) the consequences of alternative operational arrangements in the public sector for the welfare services concerned;
- f) the impact of the EU on Swedish public administration.

29. The Committee initiated more in-depth analysis of:

- a) public sector finances in the medium to long term, focusing on municipalities and country councils;
- b) productivity growth and innovation capacity in public sector services;
- c) the personal responsibility, capacity and involvement of citizens in welfare production;
- d) the need for changes or limitations in public sector commitments, including application of the “funding principle”;
- e) the use of new operational arrangement;
- f) the potential impact of the division of responsibilities and structural arrangements on the climate for growth.

30. The initial report of the Committee indeed recognises that trends within Sweden, occasioned by phenomena such as globalisation, europeanisation, new economic forms of growth and innovation and changing citizen's needs and expectations have changed the context in which regional and local democracy is exercised. They highlight the increasing trend towards greater centralisation and regulation: "Most the 17 public sector services transferred from central to local government level [in the period 1970-2003] were very small ... and 28 services were transferred from municipalities and county councils to the central government domain". Furthermore, "public sector services underwent *substantial change in the 1990s* [emphasis in original] ... Most of the government bills that in 1993-2003 clarified the responsibilities of different parts of the public administration system also curtailed the freedom of municipalities and country councils, while only a quarter gave them more freedom." In addition, central government controls local governments in the following ways:

a) by the design and size of *central government grants* – in the 1990s, there was a trend towards eliminating especially ear-marked central government grants in favour of general government grants – in recent years, however, new specially ear-marked grants have been introduced;

b) by issuing provisions *requiring local governments to balance their budgets* and by drawing up rules for taxes and fees. Central government has also for periods frozen local government tax rates and it determines the services for which fees may be charged. It has also decided on *maximum* charges for child-care services and care for the elderly;

c) the controversial *application of the "funding principle"*;

d) by using the *financial co-ordination mechanism* whereby central and local government share a common budget;

e) through *national action plans* which often contain ear-marked grants for the implementation of the plan.

f) by means of *time-limited projects* sometimes combined with the above-mentioned co-financing arrangements.

31. It is clear that these issues are extremely important for the regional and local democracy in Sweden. **We applaud the setting up of this Committee to examine these issues but recommend that it works closely with experts from the Congress of Local and Regional Authorities of Europe in order to ensure close attention is paid to the principles underlying the European Charter of Local Self-Government.**

2.2 Commission on the Constitution

32. The Swedish Government has also appointed a Commission on the Constitution, whose terms of reference are to conduct a comprehensive review of the Instrument of Government. The work of the Commission will primarily concentrate on and be orientated towards improving and enhancing the Swedish government with a view to increasing the confidence of citizens in democratic institutions and increase their participation in elections. The Commission will also, among other things, look into the issues related to the review of

legislation and will consider whether there is a need for a constitutional court. The Commission may also deal with issues relating to local government democracy.

33. It is obvious that this inquiry is also of great importance for local and regional democracy in Sweden. There is also a link to the work of the Committee on Public Sector Responsibilities.

3. SOME PROBLEMS IN THE IMPLEMENTATION OF THE CHARTER

3.1 Central regulation of local government

34. Sweden presents something of a paradox with regard to the practice of local self-government. On the one hand, as we have seen, there is a relatively strong constitutional and legislative recognition of the principle. On the other hand, Sweden is a unitary state with a long tradition of egalitarianism and generous social welfare provisions, largely delivered by the local authorities but in a standardised way and regulated by the national parliament. Special laws passed by the parliament specify and regulate tasks to be carried out by the local authorities. The Local Government Act (1991) does give a power of general competence to the local authorities while the special laws give special competences for municipalities and/or county councils. The Local Government Act makes reference to special laws and states that special provisions exist concerning the power and obligations of municipalities and county councils in certain fields. The question which arises here is whether these specific references undermine the autonomy of the local authorities in practice even though, in a legal sense, the Local Government Law is not in any way subordinate to the special laws. The financially important areas of activity are all regulated by special provisions, which can be quite detailed.

35. The Instrument of Government is, in fact, ambiguous with regard to local autonomy. On the one hand, as we have noted, it recognises the right to local self-government. On the other hand, it does not contain any provisions specifying the tasks and functions of local authorities. In Chapter 8, para. 5, it states that the principles governing the organisation and activities of local authorities, local taxation and local authorities' powers shall be governed by law, that is by Parliament. It is this part of the Instrument of Government that allows the Parliament to intervene in local authorities' affairs in sometimes a quite detailed way. This may contravene the principle of self-government also contained in the Constitution. It is true that Article 3, para. 1, of the Charter, to some extent, circumscribes the exercise of local self-government by adding the phrase "within the law". This phrase, however, should not be interpreted as meaning that the central authorities may undermine local autonomy through detailed legislation. The Swedish authorities, in their written comments on the first draft report, pointed out that the Instrument of Government is meant to be flexible. In their opinion, it allows the distribution of tasks between the Swedish state and the local government to shift over time. The regulation in Chapter 8, para. 5 is normative and protects local government by regulating who has the right to decide about the organisation, etc. It was clear to the Council of Europe delegation that there is, at the very least, an ambiguity here in the Constitution, which may be interpreted in quite different ways.

36. During the period up to the 1970s, when the Swedish welfare state was being consolidated, local authorities, while occupying an important position in the political and administrative system, were seen as agents of the central government for the delivery of a variety of services. These were closely regulated by the parliament. There was a wide

consensus in Sweden at the time as to the desirability of this system. In the 1980s, however, there was a feeling among many local authorities and the government that there should be some loosening of the controls. This led to the “free commune” experiment during that period, which began in 1985 and lasted until the Local Government Act (1991) came into force in 1992. The experiment involved selected local authorities applying to the parliament to be relieved of central controls in specified policy sectors. The selected authorities could also organise their committee structure as they wished, within broad limits. The 1991 Act incorporated the right to this self-organisation and thus continued one of the main features of the experiment. There is now a tendency to issue framework legislation, which enunciates the principles, rather than detailed specific regulations. Nevertheless, some commentators have claimed that the government and parliament are now intervening more in local government affairs. It has been claimed that in recent years there has been a greater tendency for central government to intervene in local affairs and this has provoked reactions on the part of the local authorities. We were informed by some of our interlocutors that this is partly because some issues, disability rights, for example, have become more highly politicised thus leading to great central involvement. The authorities, on the other hand, denied that such politicisation was occurring but rather that it was simply in the national interest that these services should be equal throughout the entire country and not vary between the municipalities. Another reason is that the costs of social welfare and health care have increased rapidly and local authority budgets have sometimes been unable to cope with the increases. This is especially true of the county councils who are responsible for health care and costs have risen partly because of an increase in the elderly population and partly because of new technological developments within medicine. One of the responses of central government to these changes has been to provide more grants thus increasing ear-marked grants for specific purposes.

3.2 The shift from general grants to ear-marked grants and the sale of municipal housing

37. According to Article 9, para. 7 of the European Charter of Local Self-Government, grants to local authorities should, as far as possible, not be ear-marked for the financing of specific projects. For a period during the 1990s, the Swedish government moved to increasing the amount of general grants to ear-marked grants. More recently, however, there has been a tendency to return to the ear-marked system.

38. The issue arose with regard to the sale of municipal housing when the government sought to restrict this by reducing the level of general grants in a Draft Act Temporarily Reducing General Government Grants Following the Sale of Shares in or Dividends from Municipal Housing Companies. Although the Council on Legislation considered that this was an infringement of the constitutional principle of local self-government as “the management of housing supply and implementation of housing policy are primarily a matter for the local authorities”, the Parliament did pass the Act which entered into force on 19 June 1999. The Act has now been repealed. The Municipal Housing Companies Act (2002), stipulates (Chapter 2, Sections 3 and 5) that local authorities, subject to some exceptions, must seek permission from the County Administrative Board before they sell, or lose their controlling influence over, a municipal housing company. There is a party political issue involved here as the ruling Social Democrat government favours this while the opposition parties (Moderate Party, Liberal Party, Christian Democrats and Centre Party) have reservations about it.

39. From the point of view of the Charter, the reduction of the general grant by Government as a reaction to the sale of municipal housing by local authorities appears to be in conflict both with the stipulation that government grants should be general rather than ear-marked and also that central government should not interfere in a task that has been assigned to the local authorities. Again, it would seem here that the grant system is being used for ideological purposes with regard to the sale of municipal housing although the central authorities claim that this was not the case. Although the authorities accepted the ruling of the Council on Legislation that there was an infringement of the principle of self-government, they argued that there is a reason for this, being that both the state and the municipalities share responsibility for municipal housing, which received state support and thus it is not only an issue concerning municipalities but how this public capital may be used.

40. Recommendation: restore the local authorities' control over the sale of municipal housing.

41. Also related to the provision of housing, local authorities are, according to the Local Authorities' Responsibility for Housing Act (2000-N° 1383), which came into force on 1 January 2001, required to plan housing provision in their respective areas and may be required to set up housing agency services. The Council on Legislation considered that the requirement that the government can order local authorities to set up housing agency services to be an infringement of the principle of self-government. The Standing Committee on the Constitution, on the other hand, although it was internally divided along party lines on the issue, stated that there were no constitutional objections to this when it is a last resort.

42. We support the conclusions of the Council on Legislation that there is an infringement of local self-government in these measures and that the government should use other instruments in its co-operation with local authorities (it cites options provided under sections 2 and 5 of the draft Act).

43. Recommendation: to explore the possibility of using the instruments recommended by the Council on Legislation (the options provided under sections 2 and 5 of the draft Act) rather than the measure contained in the 2000-N° 1383 Local Authorities' Responsibility for Housing Act which allows the government to order local authorities to set up housing agency services.

3.3 Restrictions on the right of county councils to contract out the operation of acute care hospitals

44. This restriction was contained in the Act Restricting the Right of County Councils to Contract out the Operation of Acute Care Hospitals (2000-N° 1440), which came into force on 1 January 2001 and was applicable until 31 December 2002. The Council on Legislation and the Standing Committee on the Constitution seemed to have some disagreement on whether this restriction was an infringement of the constitutional right to self-government. The Council argued that other measures, which did not infringe the county councils' right to autonomy, might be found by the government to achieve the ends of universal healthcare but did not specify what these might be. The Committee concluded that the universal right to adequate healthcare was so important that it supported the government in this restriction on county councils' self-government. There also seem to be a party political aspect to this

problem with the Social Democrat government supporting the measure and the opposition parties entering reservations. In a subsequent Memorandum from the Ministry of Health and Social Affairs it was proposed that a contract concluded by a county council for the transfer of the operation of health and medical care to be provided at a hospital should contain conditions providing that the operation may not be operated with object of generating profit for the owner or corresponding stakeholder.

45. Recommendation: that further consideration be given to the Council on Legislation's suggestion that other means be found to achieve the government's aim of universal healthcare which are less intrusive of county councils' self-government.

3.4 The impact of "rights" legislation on local government

46. During the 1980s, there were several laws passed which gave rights to specific groups. The best-known is the Social Services Act (1980 and 2001). The Support and Service for Certain Categories of Disabled Persons Act came into force in 1993. Although few would dispute the underlying rationale behind these laws, the legislation itself was rather imprecise and they have imposed financial constraints on the local authorities, who are responsible for implementing them. Disputes between individual citizens who make claims on the basis of the legislative and the local authorities who must pay for them are adjudicated by administrative courts. In practice, the courts have determined the volume and quality of various social services, e.g. home-help services, care of substance abusers, accommodation in service apartments for the elderly, among others. The question is whether these measures, decided by the national parliament, but administered by the local authorities, are in conformity with Article 9 of the Charter, as the Swedish Funding Principle, which state that local authorities should receive adequate financial resources to carry out tasks which are required of them by the central authorities. During our visit in October, we raised this issue with the central authorities, who were convinced that the local authorities did have adequate resources, while the local authorities' associations were convinced of the opposite. One problem here is that the final arbiter in the matter is the Parliament, which is also one of the parties of the dispute. The administrative courts are merely applying the parliamentary legislation although their administrative decisions can be deemed an infringement of the autonomy of the local authorities to allocate their resources in accordance with local needs. In some cases, the courts' decisions on finances have meant cutting back on other policy priorities. Furthermore, in the case of delays in compliance with the courts' decisions, the local authorities may receive penalty payments, which is another drain on their financial resources. The Committee on Public Sector Responsibilities also highlighted this as a problem for local autonomy. The legislation as promulgated suffers from a lack of creating a fair balance between the rights of citizens and the duty of the local authorities to provide services according to priorities in the interest of the community at large.

47. Recommendation: that the Swedish government, in consultation with the local authorities' associations, urgently examine this question with a view to finding a means, perhaps an audit commission independent of both the government and the local authorities, to evaluate the actual costs of providing these services and to preserve the local authorities' policy control vis-à-vis the administrative courts.

3.5 Tax capping

48. Although the Instrument of Government and the Local Government Act grant local authorities fiscal autonomy, there are limitations on this autonomy. The local authorities can fix local tax rates but all other rules governing local government taxation, e.g. the tax base, are decided by Parliament. There is thus some ambiguity with regard to the actual practice of fiscal autonomy. This was evident when Parliament imposed a tax freeze during the years 1991-1993. The Standing Committee on the Constitution and the Council on Legislation both made statements on this. The Committee stated that the Constitution provided little scope for tax capping. However, the Committee also gave its approval for temporary restrictions on the local authorities' fiscal autonomy. The Council stated that certain restrictions may be imposed on fiscal autonomy. Although the freezes are not in operation now, they may be re-imposed at any point in the future. The Committee on Public Sector Responsibilities also highlighted this as a problem for local autonomy.

49. Recommendation: clarify this ambiguity in such a way as to strengthen local fiscal autonomy.

3.6 Equalisation Scheme

50. We have described the operation of this above and noted that the principle of equalisation is in line with the Charter. But there may arise conflicts with its implementation. The scheme was approved in 1995, following rejection of an earlier proposal in a Government Bill of 1994, which had involved transferring taxes from one local authority to others. The Council on Legislation rejected this on the grounds that it was considered incompatible with the provision of chapter 1, section 7 of the Instrument of Government, which states that local authorities may levy taxes to enable them to perform their tasks. The Council considered that it was unconstitutional to levy taxes in one local authority to pay for the services of another because of the principle of location. The 1995 Bill seems to have solved the problem by renaming the transferred payments "charges" and "grants" instead of "taxes".

51. The European Charter of Local Self-Government (Article 9, para. 5) does stipulate there should be financial procedures to correct the effects of differences in income and expenditure between local authorities. These, however, should not diminish the discretion local authorities may exercise within their own sphere of responsibility and thus such funding should come from central government.

52. Recommendation: examine the system of equalisation with a view to lessening the infringement of local authorities' discretion over their own levied resources while keeping the principle of equalisation.

3.7 Some other instances of central imposition on local authorities

53. Some impositions :

a) Basic national social assistance allowances: these were introduced on 1 January 1998 (today found in the Social Services Ordinance, 2001, Chapter 2). Since 1 December 2004, exceptions may be made if there are extraordinary reasons to do so;

- b) The Libraries Act (1996): stipulates that there must be a public library in every local authority and that the public has the right to borrow books there free of charge;
- c) School meals in compulsory schools: this followed an amendment to the Education Act of 1 January 1998, which required local authorities to offer compulsory school pupils free school meals;
- d) Grants to independent schools: under chapter 9, section 6 of the Education Act local authorities must pay grants to independent schools approved by the National Agency for Education that provide education corresponding to that in compulsory schools in the same way as they distribute resources amongst the compulsory schools for which they are responsible;
- e) Accounting procedures and balanced budgets: The Local Government Accounting Act (1997: 614) stipulates that local authorities are now subject to detailed, specified accounting procedures. They are now required to balance their budgets under an amendment to the Local Government Act (chapter 8, section 4) that came into force on 1 January 1998;
- f) Ceilings on childcare and elderly care fees: local authorities that impose a ceiling on childcare fees are eligible for government grants under the Government Grants to Local Authorities that Impose a Ceiling on Childcare Fees Ordinance (2001: 160). There are also provisions on maximum elderly care fees in Chapter 8, sections 3 to 9 of the Social Services Act;

4. The Regions

54. Although the regional level of government is not covered by the European Charter of Local Self-Government and the European Charter of Regional Self-Government has not yet been agreed by the Council of Europe, the Congress of Local and Regional Authorities in a number of resolutions has endorsed the principle of regional government. This, alongside local self-government, is now regarded as a principle of subnational democracy. This is true even if there have been problems with agreeing on a European Charter of Regional Self-government as the recent Conference of European ministers responsible for local and regional government on 24-25 February in Budapest recognised.

55. Sweden has followed this tendency by creating two pilot regions, Västra Götland and Skåne. We commend the Swedish authorities for adopting this approach and for extending the period of experimentation. During our visit, we encountered two differing attitudes towards these experimental regions. On the one hand, politicians from the regions concerned emphasised that they were truly regions with elected regional governments and a wider range of responsibilities than the traditional county councils. On the other hand, there were those particularly in the Ministry of Finance, who insisted that they are simply a form of county council, since the Swedish Instrument of Government does not recognise a regional form of government. We understand, too, that there is a debate about whether the regions should be retained or abolished.

56. Although from a strictly constitutional point of view the two regions of Västra Götland and Skåne are, indeed, little more than super county councils. We feel, however, that, functionally and politically, they are more akin to what are called regions in other countries.

Furthermore, they have the democratic legitimacy of councils elected through the ballot box. During our visit to the Skåne region in February 2005, we were highly impressed by the success of this region in combining the traditional functions of the county councils, health and medical care, with the planning and development functions taken over from the CAB. It was clear to us that this region has experienced an economic growth and capacity to administer a variety of development programmes, from transport to health care, that would not have happened if the trial had not taken place. The closeness to Copenhagen and the new Öresund bridge linking Malmo to Copenhagen have given a new impetus to strengthening cross-border links with Denmark and, indeed, with the wider Baltic region. We were also impressed by the solid support of the municipalities within Skåne for the experiment and for region-wide approaches to developmental issues.

57. We understand that this pilot model is not favoured by other regions in Sweden but that some might be favourable to it. It is presently not possible for these regions to adopt this model even if they wish to. This opens up the question as to whether an asymmetrical approach might be possible with some regions adopting the Skåne approach and others the Regional Co-operation Council approach. Such an asymmetrical approach is increasingly being adopted in other European countries such as the United Kingdom, Spain, France and Italy.

58. Recommendation: we encourage the Swedish authorities to continue the experiment of regional government by retaining the two pilot projects and by extending the experiment to other parts of Sweden should other regions wish to adopt it. We also encourage Sweden to support current attempts to draw up a European Charter of Regional Self-government.

5. Conclusions

59. Sweden is a unitary state but with a strong system of local autonomy, which applies many of the principles of local self-government contained in the European Charter of Local Self-Government. There is constitutional recognition of the principle of local self-government as well as constitutional recognition of the right for local authorities to levy taxes to perform their tasks. The Funding principle states that central government will provide adequate funding resources if additional tasks are requested of them. In practice, Swedish local authorities have played a very important role in the welfare state system and have a high standing in the eyes of the population.

60. There are, nevertheless, problems with the implementation of the above-mentioned principles. The Instrument of Government itself is ambiguous with regard to the principle and this allows different interpretations. The two bodies which examine the constitutionality of legislation, the Council on Legislation and the Standing Committee on the Constitution, themselves seem to disagree on the interpretation of the principle as found in the Instrument of Government. There are also serious disagreements between the central and local authorities. To some extent, these disagreements are based on party political considerations but we were also struck by the fact that, among the local authorities, councillors of all parties were united in their defence of the principle of local self-government against what they regarded as encroachments by the central authorities. This unanimity was manifest between county councils and municipalities, and among county councils and municipalities right across Sweden whatever their size, geographical location, party political leadership or model

(e.g. the trial project of Skåne). We felt that, at the level of the national government, there was a greater emphasis on the principles of equality achieved through uniformity than on recognising the importance of local autonomy and that this was at least in part a party political difference. Although we recognise that these two principles are not easy to reconcile in practice, we would recall to the Swedish authorities that they have signed and ratified the European Charter of Local Self-government and are obliged to take into account its provisions.

61. Although the principle of local self-government is given constitutional and legal recognition in Sweden, we feel that its constitutional position could be strengthened by obliging Swedish law-makers always to refer to the European Charter of Local Self-government when drawing up all legislation. At present, Swedish law-makers simply assume that, because the principle is mentioned in the Instrument of Government (the Swedish Constitution) and the Local Government Act, then it will be taken into account. In this regard, there should be a system of redress, referred to in the Constitution, to which local authorities could refer breaches of the principle. The European Charter of Local Self-government could then be the bench-mark against which such breaches would be judged. This might mean a Constitutional Court, although we understand that this option is not widely favoured in Sweden even among the local authorities themselves. Another option would be to strengthen the position of the local authorities vis-à-vis the Parliament which is currently the final court in interpreting the scope of local self-government in particular with regard to funding. This might mean creating a parliamentary committee on local self-government which could hear both sides of the case – the government and the local authorities. We think that it will be appropriate that these issues, which are vital for local self-government, are raised and discussed during the work currently undertaken by the Commission on the Constitution. For the sake of clarity, the Commission should have a supplementary guideline, providing it with the mandate of putting forward proposals aimed at improving local self-government in the Swedish constitution in accordance with these conclusions.

62. Our examination of a number of case studies suggests that there has been a steady erosion of the principle of local self-government in Sweden over the past number of years in a number of areas such as rights legislation, housing provisions, immigration policy, the role of administrative courts, and the right to contract out services such as acute-care hospitals. There has also been a new tendency towards specific grants rather than general grants, although we were assured by the Ministry of Finance that that would change in the coming three years. If the government's announced proposals are approved, there will be in the next few years a reduction in the proportion of central government grants allocated for specific purposes.

**Programme
of the Congress of the Council of Europe Rapporteurs' 1st visit to Sweden
(Stockholm on 19-20 October, Västerås on 21 October 2004)**

TUESDAY 19 OCTOBER (Stockholm)

Briefing meeting with **Ms Birgitta HALVARSSON**, Chair of the Swedish Delegation to the Congress

Meeting with **Mr. Henrik HAMMAR**, Vice President of the Swedish Federation of County Councils

A working meeting with the Swedish experts on the European Charter of Local Self-government:

Mr. Torsten BJERKEN and Mr. Curt RIBERDAHL

With participation of **Mr. Håkan TORNGREN and Mr. Anders JONSSON**

Working meetings in Parliament with :

The Committee on the Constitution:

Mr. Göran LENNMARKER, Chair

Mr. Göran MAGNUSSON, Vice-Chair

Mr. Bertil WENNBERG, Secretary of the Committee

The Committee on Health and Welfare:

Ms. Ingrid BURMAN, Chair

Ms. Chatrine PÅLSSON, Vice-Chair

Mr Conny ÖHMAN, Member of the Committee

Ms Monica DOHNHAMMAR, Chief Executive of the Committee Secretariat

A working meeting in the Ministry of Finance with :

Ms. Barbro ROHDIN, Head of Unit for Local Government Affairs

Mr. Kjell ELLSTRÖM, Assistant Head of Unit for Local Finance

Mr. Clas OLSSON, Head of Department for Finance

A working meeting in the Ministry of Justice with:

Ms Anna KESSLING, Desk Officer, Department for Democracy

D I N N E R with invited guests, especially **Mr Mats SVEGFORS**, Chair of the State Committee on Public Sector Responsibilities

WEDNESDAY 20 OCTOBER (Stockholm)

Meeting with the **Mr. Anders KNAPE**, Vice President of the Swedish Association of Local Authorities

Working meeting in Parliament with the Committee on Finance:

Mr. Sven-Erik ÖSTERBERG, Chair

Mr. Ove NILSSON, Chief Executive of the Committee Secretariat

Working L U N C H with participation of:

Ms. Catharina TARRAS-WAHLBERG, First Vice Mayor, City of Stockholm

Mr. Conny ANDERSSON, Chair, Stockholm County Council

Ms. Eva SAMUELSSON, Head of Political Group, City of Stockholm

Ms. Maria ÖSTBERG, Political Adviser, City of Stockholm

Ms. Kristina SÖDERLUND, Political Adviser, Stockholm County Council

A working meeting in the Ministry of Finance with member of government:

Mr. Lars-Eric LÖVDEN, Minister of Local Government and Housing

THURSDAY 21 OCTOBER (Västerås)

A working meeting with:

Mr. Åke HILLMAN, Former Mayor of Västerås, Chair of the Negotiation Committee of the Swedish Association of Local and Regional Authorities

Mr. Staffan JANSSON, Vice-Mayor of Västerås

Ms. Agneta IVEMYR, Mayor of Hallstahammar

Mr. Johan WENNHALL, Director, Division of Services for Children, Young people and Education, City of Västerås

Ms. Eva CEDERBERG, Executive Officer

Ms. Carin BECKER-ÅSTRÖM, Chief-Executive Officer, Municipality of Hallstahammar

Mr. BoPer LARSSON, Deputy Head of Section for Democracy and Governance, Swedish Association of Local Authorities and Regions

A working meeting with local councillors:

Mr. Tommy HAMBERG, Vice-Chair of Eskilstuna Municipal Board

Ms. Elizabeth SALOMONSSON, Chair of Köping Municipal Board

Mr. Erik LANGBY, Chair of Nacka Municipal Board

Ms. Carola GUNNARSSON, Chair of Sala Municipal Board

A working meeting with **Mr. Mats SVEGFORS**, Chair of the Board, Province Administration of Västmanland, Chair of the State Committee on Public Sector Responsibilities

A working meeting with county/regional councillors:

Mr. Glenn ANDERSSON, Chair of County Council Board of Västmanland

Ms. Monika WILANDER, Vice-Chair of County Council Board of Västmanland

Ms. Ingrid AMRÉN, Chair of County Council Board of Gävleborg

Ms. Catarina SEGERSTEN LARSSON, Chair of County Council Board of Värmland

**Programme
of the Congress of the Council of Europe Rapporteurs' 2nd visit to Sweden
(Skåne 28 February, Karlstad 1 March, Stockholm 2 March 2005)**

MONDAY 28 FEBRUARY (Pilot Region of Skåne)

Working meetings with representatives of the pilot region of Skåne

Mr. Mats WELFF, Mr. Ronnie HALVARDSSON, Ms Monika YNGVESSON,
Mr. Per-Olof PERSSON, Mr. Gösta AHLBERG, Ms Chris MARSCHALL,
Mr. Mats PETERSSON, Mr. Hans HENECKE, Ms Sofie QVARFORD, Mr Stig ÅLUND,
Mr Dag JUHLIN

Meeting with the President of the Swedish Association of Local Authorities

Mr. Ilmar REEPALU

And the Vice President of the Swedish Federation of County Councils

Mr. Henrik HAMMAR

Working Dinner with participation of:

Mr Uno ALDEGREN, Chair of the Skåne Regional Board and Regional Commissioner of the Region of Skåne

Ms. Christine AXELSSON, Regional Commissioner of the Region of Skåne

With the participation of **Jerker BJURNEMARK, Ronnie HALVARDSSON, Monica YNGVESSON, Stig ÅLUND, Pontus TALLBERG**

TUESDAY 1 MARCH (Region of Wärmland and Karlstad)

Meetings with representatives of the municipality of Arjäng and Karlstad

Mr Kjell ERICSSON, Chair of Municipal Board and Municipal Commissioner, and members of the municipality executive committee

With the participation of **Mr Anders KNAPE**, Vice President of the Swedish Association of Local Authorities and Member of the Bureau of the Congress of Local and Regional Authorities of the Council of Europe

And **Ms Birgitta HALVARSSON**, Chair of the Swedish Delegation to the Congress of Local and Regional Authorities of the Council of Europe

Visit of the Social and Child Care Center

Press Conference

WEDNESDAY 2 MARCH (Stockholm)

A working meeting with the Council on Legislation:

Mr Staffan MAGNUSSON, Chairman of the Council on Legislation

Mr. Göran SCHÄDER, member of the Council on Legislation

A working meeting with the Parliamentary Committee on the Constitution

Mr. Göran LENNMARKER (Conservative Party), Chair of the Committee on the Constitution

Mr. Göran MAGNUSSON (Social Democratic Party), Vice Chair of the Committee on the Constitution

A working meeting with the Ministry of Finance:

Mr. Sven-Erik ÖSTERBERG, Minister for Local Government and Financial Markets

A working meeting with representatives of the Association of Local Authorities and Regions

Mr. Anders KNAPE, Vice President of the Swedish Association of Local Authorities

Mr. Håkan SÖRMAN, Managing Director of the Swedish Association of Local Authorities and Regions

Mr Clas OLSSON, Director

With participation of:

Mr Torsten BJERKÉN, Member of the Group of independent experts on the European Charter of Local Self-Government

Mr Curt RIBERDAHL, Substitute-member of the Group of independent experts on the European Charter of Local Self-Government

Mr Håkan TÖRNGREN, Senior Legal Consultant, Swedish Association of Local Authorities and Regions

Mr BoPer LARSSON, Deputy Head of Section for Democracy and Governance, Swedish Association of Local Authorities and Regions

Ms Christina RYDBERG, Secretary of the Swedish delegation to the Congress