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## **Local and regional democracy in the United Kingdom**

Monitoring Committee

Rapporteurs:<sup>1</sup> Angelika KORDFELDER, Germany (L, SOC)  
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### *Summary*

This is the second report on the state of local and regional democracy in the United Kingdom and follows up on Recommendation 49 of 1998. The report expresses satisfaction that the United Kingdom is, in general, in compliance with the obligations taken under the Charter and that, compared to 1998, the situation has improved, notably through the devolution process. As regards consultation procedures, the report welcomes the successful partnership approach adopted in Scotland, Wales and Northern Ireland. It notes that there are some areas of concern, particularly as regards the financial resources of local authorities, their limited taxing powers and their dependence on government grants. It also underlines that there are ambiguities that need to be addressed in areas such as the lack of recognition of the right to local self-government in the law beyond the general powers granted by the Localism Act 2011, and the limitation of local authorities' discretion to manage local affairs through the intervention by various ministries of the central government.

The rapporteurs, aware of the difficulty of anchoring local self-government in constitutional law, given the legislative framework of the country, invite the UK Government to consider the various existing codification proposals for local government in England in order to strengthen the position of local authorities. They recommend that the UK Government take measures to reduce the financial burden on local authorities arising from budget cuts and indebtedness, and reinforce the role of elected office holders by improving their status. They encourage the UK authorities to update their declaration concerning the scope of the application of the Charter to include the Greater London Authority as well as Northern Ireland. Finally, they invite the Government to consider the ratification of other instruments related to the Charter, namely the Convention on the Participation of Foreigners in Public Life at Local Level, the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority and the Additional Protocol to the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities.

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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 the United Kingdom

### RECOMMENDATION 353 (2014)<sup>2</sup>

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)<sup>2</sup> 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)<sup>2</sup> 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)Rec282final] 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 the United Kingdom;

2. The Congress recalls that:

*a.* the United Kingdom signed the European Charter of Local Self-Government (hereafter “the Charter”) on 3 June 1997 and ratified it on 24 April 1998. It made a declaration to the effect that it intends to confine its scope to the following categories of authorities: in England, county councils, district councils and London borough councils and the Council of the Isles of Scilly; in Wales, to all councils constituted under Section 2 of the Local Government (Wales) Act 1994 and in Scotland, to all councils constituted under Section 2 of the Local Government (Scotland) Act 1994;

*b.* it has not ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) nor signed the Additional Protocol to the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities (ETS No. 159);

*c.* the Monitoring Committee instructed Mrs Angelika KORDFELDER (Germany, L, SOC) and Mr Alexander USS (Russian Federation, R, EPP/CCE) as co-rapporteurs on local and regional democracy respectively, to prepare and submit to the Congress the report on local and regional democracy in the United Kingdom;<sup>3</sup>

*d.* the Congress delegation carried out two visits, from 29 to 31 May 2013 (London, Leeds, Edinburgh) and from 5 to 7 November 2013 (London, Cardiff) respectively, to review the situation of local government in the United Kingdom;

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<sup>2</sup> Debated and adopted by the Congress on 26 March 2014, 2<sup>nd</sup> Sitting (see Document CG(26)10FINAL explanatory memorandum, rapporteurs: Angelika KORDFELDER, Germany (L, SOC) and Alexander USS, Russian Federation (R, EPP/CCE).

<sup>3</sup> They were assisted by Professor Jens WOELK, consultant, member of the Group of Independent Experts on the European Charter of Local Self-Government, and Mr Jean-Philippe BOZOULS and Ms Sedef CANKOÇAK from the Secretariat of the Congress.

e. the rapporteurs are aware that, the United Kingdom being in reality made up of four countries which retain territorial and cultural distinctions of their own, their recommendations will be addressed to the United Kingdom as Member State of the Council of Europe, but the implementation thereof will be subject to the powers and responsibilities of the United Kingdom as well as to those of the governments of Scotland, Wales and Northern Ireland according to the distribution of competences regarding local government.

3. The Congress wishes to thank the Permanent Representation of the United Kingdom to the Council of Europe and the British authorities at central, devolved entity and local levels, all the local government associations, experts as well as other interlocutors for their valuable co-operation during the different stages of the monitoring procedure and the information conveyed to the delegation.

4. The Congress notes with satisfaction that:

a. local government in the United Kingdom, in general, complies with the obligations taken under the Charter and that the situation has improved since the United Kingdom ratified the Charter in 1998, notably through the devolution process which brought the powers related to local government under the responsibility of the devolved entities;

b. the Localism Act 2011, by introducing a “general power” for local authorities, greater freedom to decide their internal arrangements and appoint their own auditors, has taken an important step in the direction of incorporating principles related to local government into domestic legislation;

c. a successful partnership approach has been adopted in Scotland, Wales and Northern Ireland that facilitates consultation with local authorities in matters concerning them;

d. the local government associations in the United Kingdom play an important role, gathering representatives from local authorities from different political backgrounds, giving local government an overarching voice and negotiating with the central government and with the devolved governments, although in many cases it is informal and not based upon legal guarantees.

5. The Congress expresses concern, however, that :

a. the Constitutional or legislative recognition and entrenchment of (the right to) local self-government does not exist in the United Kingdom (including in Scotland), and that the introduction of a general power for local authorities does not go far enough in satisfying the spirit of the Charter;

b. while legal duties for local authorities to be consulted do exist and are used in practice, the ways and the time-frame for consultation seem to be controversial, the time-frame depending on the concrete subject, and in particular on the nature and the possible impact of a proposal;

c. local authorities do not have adequate financial resources, are under severe constraints as a consequence of cuts and indebtedness, and are faring worse than other public sectors and the national government in weathering the effects of the economic crisis (in spite of the very welcome government reform of 2013, localising business taxes in England and Wales but not in Scotland), all of which contribute to a situation that raises issues under Article 9 of the Charter;

d. the status of elected councillors does not fully correspond to their responsibilities and the low turnouts at local elections indicate the necessity to strengthen the democratically elected institutions as well as the role of elected office holders who are the backbone of the local government system;

e. local authorities do not have sufficiently prominent leadership and co-ordinating functions vis-à-vis other service providers within their local area, although they manage a considerable share of public affairs and services and represent the local community in important issues beyond that, such as planning and licensing;

*f.* oversight through extensive reporting duties and active involvement in local affairs by various ministries of the central government poses considerable limits on local authorities' discretion to manage local affairs, although it must be said that significant steps have been taken by the Government to reduce centralised performance assessments.

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

*a.* explore the constitutional and practical issues around the possibility of formalising the principles and mechanics of the relationship between central and local government, in the light of the Charter, the arguments developed by both local elected representatives, their associations and the Political and Constitutional Reform Committee of the House of Commons and the devolved parliaments where applicable for a more codified approach;

*b.* develop more institutionalised, uniformly time-framed and legally guaranteed consultation arrangements for local government, taking into account the necessity or opportunity for local authorities to consult their local population, at least regarding important issues, and in this regard, consider the partnership approach and the co-operation experiences in Scotland, Wales and Northern Ireland for the relations between central government and English local authorities;

*c.* reduce the financial burden of local authorities, particularly in England (where local government has powers without sufficient funding to implement them, a situation which curbs local authorities' freedom of action and decision making considerably) but also in the other entities of the United Kingdom, further developing a diversified base of local revenue to cope with the services they provide;

*d.* re-evaluate the work of executive councillors so that their status corresponds better to their responsibilities, with a view to improving the engagement of citizens and particularly the younger generation who might be discouraged by the economic disadvantages of full-time council work;

*e.* give elected representatives of local government leadership and co-ordinating functions vis-à-vis other service providers within their local area;

*f.* carry out the oversight of local government in a manner to ensure that the involvement of the controlling authorities is kept in proportion to the importance of the interests which it is intended to protect as set by Article 8 para. 3 of the Charter;

*g.* review, in the near future, the United Kingdom's declaration in the light of the current situation as this refers in part to authorities which do not exist anymore and do not include the Greater London Authority and Northern Ireland;

*h.* consider the ratification of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) and the Additional Protocol to the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities (ETS No. 159).

# Local and regional democracy in the United Kingdom

## EXPLANATORY MEMORANDUM

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## 1. INTRODUCTION: OBJECTIVE OF VISIT, TERMS OF REFERENCE, SCOPE

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. The United Kingdom 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 3 June 1997 and ratified it on 24 April 1998. It made a declaration to the effect that it considers itself bound by all the paragraphs of Part 1 of the Charter, but intends to confine its scope to the following categories of authorities:<sup>4</sup> In England, county councils, district councils and London borough councils and the Council of the Isles of Scilly, in Wales, to all councils constituted under Section 2 of the Local Government (Wales) Act 1994 and in Scotland, to all councils constituted under Section 2 of the Local Government (Scotland) Act 1994. According to the understanding of the United Kingdom, the term "local authority" does not include local or regional bodies such as police authorities<sup>5</sup> which, by reason of the specialist functions for which they are responsible, are composed of both elected and appointed members. The Charter does not apply to Northern Ireland (not included in the 1998 declaration on the Charter's application, probably due to the peace process in course at that time), or to the assemblies of the devolved territories, Scotland and Wales.

3. The United Kingdom signed (but has not yet ratified) the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144) on 5 February 1992. It has also not ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) or signed the Additional Protocol to the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities (ETS No. 159).

4. A first review was carried out in the United Kingdom through two visits, in December 1997 and March 1998 respectively, resulting in Recommendation 49 (1998) of the Congress on the situation of local and regional democracy in the United Kingdom of 28 May 1998.<sup>6</sup>

5. The present report relates to the visits of the Congress to the United Kingdom from 29 to 31 May 2013 (London, Leeds, Edinburgh) and from 5 to 7 November 2013 (London, Cardiff), to review the situation. Mrs Angelika KORDFELDER (Germany, L, SOC) and Mr Alexander USS (Russian Federation, R, EPP/CCE) were appointed as co-rapporteurs on local and regional democracy, respectively. They were assisted by Professor Jens WOELK, consultant, member of the Group of Independent Experts on the European Charter of Local Self-Government, and Mr Jean-Philippe BOZOULS and Ms Sedef CANKOÇAK from the Secretariat of the Congress.

6. The Congress delegation met with Members of Parliament representing the UK, Scotland, Wales and Northern Ireland, the Parliamentary Under Secretary of State for Communities and Local Government, officials of Government departments, High Court judges and the Local Government Ombudsman (London). They met representatives of the Local Government Association (LGA), the Northern Ireland Local Government Association (NILGA), the Convention of Scottish Local Authorities (COSLA) and the Welsh Local Government Association (WLGA). They also met with experts and local government representatives from the Greater London Authority, London Borough of Hackney, City of Westminster, Leeds, Cardiff and council leaders from Scotland. The detailed programmes are appended hereto.

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4. Declaration contained in a letter from the Secretary of State for Foreign and Commonwealth Affairs, dated 14 April 1998, handed to the Secretary General at the time of deposit of the instrument of ratification, on 24 April 1998. Thus, in England, parish councils are excluded, as these are not considered fully fledged bodies of local government.

5. Which no longer exist in the same form.

6. For more detail on concerns expressed in the Explanatory Memorandum on Local and Regional Democracy in the United Kingdom (26-28 May 1998), see section 4.1:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CG\(5\)7&Language=lanEnglish&Ver=original&Site=Congress&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CG(5)7&Language=lanEnglish&Ver=original&Site=Congress&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

7. The co-rapporteurs wish to thank the Permanent Representation of the United Kingdom to the Council of Europe and all those whom they met during the visit for their readiness to assist the delegation and for the information they so willingly supplied. It also thanks the United Kingdom delegation to the Congress and all the associations of local authorities for contributing to the organisation and smooth running of the visit.

## 2. POLITICAL CONTEXT

### 2.1 *Developments since Recommendation 49 (1998)*

8. It is fair to state that, since the last report on the United Kingdom (“UK”) in 1998, things have moved on, as there have been profound changes to the wider context. The comprehensive constitutional reform which took place included devolution, the Human Rights Act 1998 and a new Supreme Court for the United Kingdom, in a context of economic growth. Since 2008, as elsewhere in Europe, the political agenda has been dominated by the financial problems that have followed in the wake of the world banking crisis.

9. For the purposes of this report, the most remarkable of these changes is the process of devolution which started in 1998. This is true in constitutional terms and as regards the impact on local self-government and regional democracy, since most of the related powers are now under the responsibility of the devolved entities (although the power to reorganise devolution has remained almost wholly a UK matter). In this report, the Rapporteurs will treat the situation in England and in the three devolved entities separately for most issues but will start by drawing a general picture of the devolution process in which changes and reforms of local government are embedded.

10. Essentially, there is no single pattern of local government in the United Kingdom. Instead arrangements vary in the four ‘nations’ of England, Wales, Scotland and Northern Ireland.<sup>7</sup> As a basic pattern, in Scotland, Wales and urban England, including London, single-tier (unitary) authorities provide all local services,<sup>8</sup> whereas most of non-metropolitan England is served by a two-tier system split between district and county councils.<sup>9</sup> History is important for understanding the process and its consequences better. But equally important is the imbalance in demographic and economic terms already emerging from the population figures between England (52 million) compared to Scotland (5 million), Wales (3,5 million) and Northern Ireland (1,8 million).

#### 2.1.1 *The Devolution Process*

11. Until 1998, the UK could well be categorised as a rather centralised unitary State (although local government legislation had some different features, e.g. in Scotland). However, the devolution legislation introduced after the election of the Labour government in 1997 conferred varying degrees of decision-making authority and substantial powers to a new set of democratically elected bodies in Scotland, Wales and Northern Ireland (and London).<sup>10</sup> This has been achieved by a set of Acts: the Scotland Act 1998 and the Government of Wales Act 1998 came into effect after their approval by referendum in Scotland and Wales in 1998.<sup>11</sup> These Acts have been implemented by a series of “soft” law, i.e. a Memorandum of Understanding and Concordats.<sup>12</sup>

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7. A note on terminology: in the UK context, the constituent units Wales and Scotland (and England as well as Northern Ireland) are often referred to as “Nations”, they are not considered “Regions”. In Scotland, for example, reference to the “national” government means the Scottish Government; in Wales, the official denomination of the assembly is “National Assembly for Wales”.

8. In London there is also the Greater London Authority (see below). In the metropolitan areas a few functions, such as fire and civil defence and passenger transport are provided in each county area by the districts acting jointly.

9. Stevens, Andrew, History and many post-war reforms shape local government in UK (10 April 2012), at [[http://www.citymayors.com/government/uk\\_government.html](http://www.citymayors.com/government/uk_government.html)]

10. Reference is to the Greater London Authority with its Assembly; see above, footnote 6, as well as below para. 64, 67, 68 and 263-270.

11. Leyland, The Constitution of the United Kingdom (2012), p. 244, underlines the general European context in which the devolution process took place, such as the influence of the principle of subsidiarity and of EU regional funding.

12. In this context, it should also be mentioned that an Assembly and a Mayor for London have been introduced by the Greater London Authority Act 1999. However, the Greater London Authority not being part of the ‘authorities’ recognised under Article 13 of the Charter, it will generally be treated in the part of the report dedicated to “Regional Democracy” (3.4).

12. It should be noted that devolution does not follow a uniform scheme. Its main characteristics are an asymmetry in the distribution of powers and differentiated relations according to the distinct history of each nation. While Scotland was united with England in 1707 (Treaty and Acts of the Union), keeping however its own legal system and its different educational system, Wales has been closely linked to England in institutional terms since 1536 (Act of Union), but maintained a strong separate cultural identity and language.<sup>13</sup> By contrast with Scotland, Wales has never been a Nation-State of its own. Historically, institutions have been shared between England and Wales, e.g. the criminal law and justice system.

13. Northern Ireland is a special case. Under the Government of Ireland Act 1920, it was actually the first part of the UK to have a devolved government. However, its Parliament was suspended in 1972 when violence escalated during the “Troubles”. A period of direct rule by the UK government followed until the Good Friday Agreement of April 1998. This Agreement intended to settle the conflict and to reconcile the two communities in part by setting up a devolved government and by a power sharing arrangement specific to this entity. The Good Friday Agreement was approved by referendum and implemented by the Northern Ireland Act 1998. Until 2007, however, devolution has been suspended a number of times due to difficulties, particularly in the implementation of the Agreements (related to disarmament or “decommissioning” of arms); since 2007, it has been fully operational.<sup>14</sup>

14. As a result, the devolution process, as well as the unchanged treatment of England, has significantly changed the relations and constitutional balances between the UK government and the devolved entities. It has been said that although “devolution was not part of a grand constitutional design”, it has “created a new constitutional dynamic”. Subsequent changes brought in new powers for the devolved entities. However, the continuing role of central government must not be underestimated.<sup>15</sup>

15. Four main “constitutional” questions are on the agenda in the near future: (a) the case for codifying a UK Constitution, (b) attempts to extend citizen participation, (c) the UK position vis-à-vis European integration, and (d) whether the dynamics of devolution will lead to a federal State or to the break-up of the United Kingdom.<sup>16</sup>

### 2.1.2 *The “English Question”*

16. Not having its own devolved legislature or government, England remains a unitary State with the Parliament in Westminster and directly governed by the UK Government in Whitehall.<sup>17</sup> This asymmetry in political representation (and funding, see below) compared to the three devolved territories is often referred to as the “English question” and is the subject of an intense debate. Members of Parliament (MPs) from Scotland, Wales and Northern Ireland continue to decide on English issues while English MPs are excluded from decision making on devolved matters of competence.<sup>18</sup> Various proposals for a solution have been discussed, ranging from preventing MPs from outside England to vote on English bills (which would have various serious constitutional and political implications)<sup>19</sup> to the establishment of an English Parliament. The introduction of such an English Parliament (representing 80% of the UK population), however, seems unlikely as political

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13. The Act of Union 1707 specifically grants in its Section 22 that Scottish Local Government will remain a separate jurisdiction from the rest of the UK, which was unaltered by the Union, a unique case in Europe to this day.

14. While the UK has not included Northern Ireland local authorities among those included within the application of the Charter, the UK Government has kindly assisted in the organisation of meetings with the Northern Ireland Office and other representatives. There has also been a meeting with the Northern Ireland Local Government Association. The scope of these meetings was to informally discuss the situation and to explore the possibilities of a possible application of the Charter to Northern Ireland in future.

15. “As the Westminster Parliament retains sovereignty and has kept control over purse strings”, Leyland, *The Constitution of the United Kingdom* (2012), p. 245, according to whom the soft-law character of the Concordats strengthens the dominance of central government over the devolved entities. Other scholars rather emphasise the role of accompanying acts and of government control.

16. See Leyland, *The Constitution of the United Kingdom*, 2012, p. 295-306.

17. Historically, England has never been systematically organised in geographical regions (with the exception of the period between 1994 and 2011 when 9 administrative regions, since then abolished, were exercising some devolved functions).

18. It is worth noting that the new Northern Ireland Bill contains clauses which would prevent Members of the House of Commons from sitting concurrently in the Northern Ireland Assembly.

19. In July 2013, the Coalition Government presented plans to introduce legislation for giving English MPs an effective veto on all UK legislation that does not affect Scotland, Wales and Northern Ireland. The Labour opposition strongly opposes such a planned “fourth reading” of those Bills which would only be voted by English MPs.

support in mainstream parties and electorate is lacking.<sup>20</sup> In March 2013 the McKay Commission on the 'Consequences of Devolution for the House of Commons' delivered its report addressing 'the English question' directly. While identifying the issue as the 'gaping hole' in the overall devolution settlement, the report rejected all solutions to the English question other than keeping the status quo.

17. The former Labour government searched for a consensus regarding decentralisation through the introduction of a directly elected regional government in England. Two regional referendums have been held so far. The first, concerning London, took place in May 1998 and the yes-vote led to the introduction of a regional government in London. The second took place in November 2004 and the establishment of such a region was overwhelmingly rejected by the electorate in the northeast of England (where disadvantages compared to bordering Scotland were felt most strongly). The negative result of the referendum (46% turnout, only 22% in favour) stopped the process politically also for the rest of England.

18. Until the end of March 2012, the top level of sub-national administration within England consisted of nine administrative regions (which were used by central government for statistical purposes) and government offices as well as other institutions including Regional Development Agencies (based upon the RDA Act 1998). In the plans of the Labour government, these regions were to become a new layer of government. Their assemblies, consisting of members nominated by local authorities and stakeholders, were to be transformed into elected regional assemblies without law-making powers, but with functions of control and strategic co-ordination (i.e. much less powerful than the other devolved entities). However, the regions were abolished by the new Conservative-Liberal Democratic Government in 2010. Only the Greater London Authority with its directly elected Mayor and Assembly might be considered a "region" in the functional sense.

### 2.1.3 "Better together" or "two futures": Scottish independence?<sup>21</sup>

19. After the elections of May 2010 (UK) and of May 2011 (Scotland), the political landscape changed completely. In Westminster a coalition government of Conservatives and Liberal Democrats took over while the Scottish National Party (SNP) won an overall majority in the Scottish Parliament. Dominating the Scottish Parliament and the Government, the SNP now pursues its own and distinct policy agenda, especially in social affairs and the educational sector. However, this has also increased the potential for (political and legal) controversy with the UK government, as there is no longer any mitigation due to the same party affiliation.<sup>22</sup> In addition, the SNP's commitment to independence has led to an agreement with the central government to organise a "consultative referendum" on independence in Scotland to be held on 18 September 2014.<sup>23</sup> Although many questions related to the perspective of an independent Scotland are still unclear – its economic viability and EU membership are just two out of many uncertain issues. A pro-independence outcome in the referendum would most probably only be a first step in a process of negotiation for the exact terms of such a decision.<sup>24</sup> Less than one year before the date of the referendum, opinion polls suggest that there is a high probability that there might not be a majority in favour of Scottish independence.<sup>25</sup>

## 2.2. International context and relations with neighbours

20. The United Kingdom is a member of the Council of Europe as well as of the European Union. The general context of European integration has been beneficial in particular for Northern Ireland which is

20. For a summary of the debate on "Devolution and England", see Leyland, *The Constitution of the United Kingdom*, 2012, p. 272-278 (with further references). See also the website of the Campaign for an English Parliament [<http://www.thecep.org.uk/>].

21. The title draws on two slogans chosen by the two opposing camps in the referendum campaign: "Better Together" against independence and pro-Union [<http://bettertogether.net/>] and "Choice between two Futures" as one of the slogans of the "Yes Scotland"-campaign for independence [<http://www.yesscotland.net/>].

22. In reality, however, since 1999 there has been remarkably little legal controversy.

23. According to the so-called Edinburgh Agreement of 15 October 2012 between the UK Government and the Scottish Government on a referendum on independence for Scotland; see the websites of Scottish Government [<http://www.scotreferendum.com/>] and of the UK Parliament [<http://www.publications.parliament.uk/pa/ld201213/ldselect/ldconst/62/6203.htm>].

24. Some even sustain the necessity of a second referendum after an agreement about the terms of independence, maybe even by the electorate of the whole United Kingdom; Tierney, 'It Will Take Two to Tango: If the Voters Do Say Yes', *The Scotsman* 7 June 2011; 'Two Referendums Needed for UK Split', *The Scotsman* 7 June 2011; Leyland, p. 251-252.

25. See e.g. UK Polling Report [<http://ukpollingreport.co.uk/scottish-independence-referendum/>].

the only part of the UK that shares a land border with another EU country. Membership in both organisations has never been easy or free from controversies due to considerable (perceived or real) differences between “Continental Europe” and the British Isles. However, such a “Continental Europe” exists only as a geographical or simplified concept, as the enormous differences between single European countries demonstrate. In addition, as in most other European countries, the two organisations are not always clearly distinguished in public perception and debate and differences between them are often neglected. In fact, the Rapporteurs noted during the visit that, quite often, the Charter was associated with the EU and not with the Council of Europe.

21. The recent debate on UK membership in the EU (including a referendum on EU membership announced for 2017),<sup>26</sup> and the campaign for European Parliament elections (May 2014) tend to have repercussions also for other, unrelated “European affairs”. In a similar way, decisions of the European Court of Human Rights (for example on prisoners’ voting rights) have caused rough critical comments and a general debate about “European standards”.

### **2.3. Internal political context and elections**

#### *2.3.1 Government structure*

22. The United Kingdom is a Parliamentary democracy. The head of State is the King or Queen, currently Queen Elizabeth II (since 6 February 1952).

23. The Parliament is bicameral and composed of the House of Commons and the House of Lords.

24. In the House of Lords membership is not fixed. Its 788 seats are distributed among 670 life peers, 92 hereditary peers, and 26 clergy as of 1 April 2012. There are no elections to the House of Lords. In 1999, elections were held to determine the 92 hereditary peers who would remain; after these, elections are held only as vacancies in the hereditary peerage arise.

25. The highest Court is the (new) Supreme Court which consists of 12 justices including the Court president and deputy president. The Supreme Court was established by the Constitutional Reform Act 2005 and implemented in October 2009, replacing the Appellate Committee of the House of Lords as the highest court in the United Kingdom.<sup>27</sup> It is also responsible for controversies related to devolved powers.

#### *2.3.2 Parliamentary elections*

26. The 650 members of the House of Commons are elected by popular vote to serve five-year terms unless the House is dissolved earlier. The last elections on 6 May 2010 had the following results: Conservative 36.1% (305 seats), Labour 29% (258), Liberal Democrats 23% (57), other 11.9% (30).

27. In 1998 elections were held for the Northern Ireland Assembly; in 1999, the first elections for a Scottish Parliament and a Welsh Assembly were held. The most recent elections for the Northern Ireland Assembly, the Scottish Parliament, and the Welsh Assembly took place in May 2011.

28. The UK Government is a coalition government of Conservatives and Liberal Democrats (since 11 May 2010), led by the Prime Minister David Cameron. Subject to the coalition agreement, the Cabinet of Ministers is appointed by the Prime Minister.

#### *2.3.3 Local elections*

29. The representation of political parties in local government in England and Wales and the balance of power in local government change frequently due to regular elections and by-elections.<sup>28</sup>

30. Following the May 2011 local elections, political party representation in England and Wales was as follows: Conservatives controlled 202 councils (+1, 47,9%) and had 9.307 councillors; Labour

26. See e.g. [<http://www.bbc.co.uk/news/uk-politics-24859102>] and [<http://www.bbc.co.uk/news/uk-politics-22509588>]

27. For many purposes, with the exception of Scottish criminal matters.

28. See details on local election results at [<http://www.local.gov.uk/local-government-elections>] as well as at <http://www.electoralcommission.org.uk>.

controlled 79 councils (+28, 27,6%) and had 5.358 councillors; Liberal Democrats controlled 13 (-12, 15,1%) councils and had 2.926 councillors; 'Others' – controlled six (-3, 9,5%) councils and had 1.864 councillors. There was no overall control in 73 (-14) councils.

31. Following the May 2012 local elections, held in 128 English and all but one (i.e. 21) Welsh local authorities,<sup>29</sup> political party representation was as follows: Conservatives controlled 42 councils (28,2%); Labour controlled 71 councils (47,7%); Liberal Democrats controlled 6 councils (4,0%); 'Others' controlled two councils (1,3%). There was no overall control in 28 councils (18,8%). After these elections, a breakdown by political party in the 373 councils in England and Wales gave the following picture: Conservatives controlled 190 councils (50,9%); Labour controlled 110 councils (29,5%); Liberal Democrats controlled 12 councils (3,2%); 'Others' controlled four councils (1,1%); no overall control in 57 councils (15,3%).

32. In May 2013, elections were held in 35 local authorities in England: in all county councils, one unitary authority, the Isles of Scilly and in the City of London and one Welsh unitary authority leading to Conservative control of 18 councils and Labour control in 3 councils, while Liberal Democrats and 'Others' did not reach control of any council; in 14 councils there was no overall control.

- Local elections in Scotland

33. The 2007 Scottish local elections were held in all 32 local authorities on 3 May 2007, the same day as Scottish Parliament elections and local elections in parts of England. They were the first elections for local government to use the Single Transferable Vote (STV). This system, used in Northern Ireland, had been introduced for Scotland by the Local Governance (Scotland) Act 2004 and resulted in a situation where most councils require coalition arrangements. Despite huge losses, Labour won the highest share of the vote (28,1%, 348 councillors; 161 councillors less than four years before), followed immediately by the Scottish National Party (27,9%, 363 councillors, +181). The Liberal Democrats had 166 councillors (12,7%), the Conservatives 143 (15,6%) and 'Others' 10 councillors (4,9%).

34. The next Scottish local elections were held after five years, i.e. in May 2012 (instead of 2011; according to the advice of the Gould Report and the previous MacIntosh Commission). The Scottish National Party (SNP) overtook Labour to win the highest share of the vote (32,3%), and retained and strengthened its position as the party with most councillors (425, +62 councillors). Labour also made gains (31,4%, +46 councillors; total 394), while the Liberal Democrats experienced meltdown (6,6%, 71 councillors, -95), falling behind the Conservatives (13,3%, 115 councillors, -28). The SNP won majority control of 2 councils, from no overall control. Labour also won majority control of 2 councils from no overall control, while retaining majority control over 2 councils. Independent councillors retained majority control over the 3 island councils. The 23 other councils remained under no overall control, thus requiring coalition arrangements or minority administrations. Beyond the actual results, the move to STV from the previous "first past the post" majority system made coalitions the rule everywhere in Scotland. According to many interlocutors, this more "continental" style of governance has provoked a very significant change in the way local government worked.

- Local elections in Northern Ireland

35. The most recent Northern Ireland local government elections took place in May 2011. The elections were originally scheduled to take place in 2009, but postponed until 2011 to allow the implementation of a proposed reform of local government reducing the number of local councils from 26 to 11, and councillors' terms of office were extended until after the election day in 2011. However, in June 2010, the proposed reforms were delayed by the Northern Ireland Executive (who are responsible for local government under the devolution arrangements). The 2011 elections were nevertheless confirmed, although they were to apply to the existing 26 councils. There was also an election to the Northern Ireland Assembly and a referendum on voting reform on the same day. The reforms have since been adopted and the next Northern Ireland local elections (in 2014) will be for the 11 new districts.

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29. Local elections were deferred for Anglesey County Council until 2013.

36. In 2005, the Democratic Unionist Party (DUP) had won the largest share of votes (29,6%) and seats (182 councillors), followed by Sinn Fein (23,2%, 126), while the Ulster Unionist Party (UUP) came third (18,0%, 115), followed by Social Democratic and Labour Party (SDLP) with 17,4% (101) and the Alliance (5,0%, 30); 'Others' had reached a share of 6,8% (28). In the local elections of 5 May 2011, the DUP again won the largest share of votes and seats (27,2%, 175, -7), with Sinn Fein as the second party (24,8%, 138, +12). The UUP reached 15,2% (99, -16) followed by SDLP (15,0%, 87, -14). Alliance (7,4%, 44) and 'Others' (10,4%, (39, + 11) could increase their shares.

#### **2.4. Previous report and recommendations**

37. So far, only one Congress review of local democracy in the United Kingdom has been carried out, dating back to the period of ratification of the Charter when major reforms were carried out by the then Labour government.

38. In its Recommendation 49 (1998) on the situation of local and regional democracy in the United Kingdom the Congress recommended in particular:

- i. to establish a legal framework giving local government a clear basis and a general competence for the benefit of its citizens and other inhabitants;
- ii. to clarify the distinction between powers delegated to local government by national government, as compared to local government's own powers;
- iii. to increase local government's financial capacities by developing the share of their own income as compared to State grants, and by abolishing practices like "rate capping" and by re-localising the "business rate";
- iv. to give local authorities greater accountability towards citizens;
- v. to reduce the power of outside bodies on local government management in fields such as "value for money" or "best value";
- vi. to ensure that elected mayors and councillors who have to work full time are able to draw a decent income from their activity without being placed in an awkward position when compared to the senior officials working for them;
- vii. to establish that the principles accepted by the United Kingdom within the Charter should be incorporated in the domestic law and considered as binding by the domestic courts.

39. In the same recommendation, the Congress also expressed "the hope that the British Government will agree, in the near future, to sign and ratify other Council of Europe conventions in the field of local and regional government, and in particular:

- the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities [ETS 106] and its Additional Protocols [ETS 159 and ETS 169];
- the Convention on the Participation of Foreigners in Public Life at Local Level [ETS 144];
- the European Charter for Regional or Minority Languages [ETS 148]" (sub 27).

40. The UK was rather slow to sign the Charter, largely because local government was not seen by the then government as an issue for international standard-setting.<sup>30</sup> Still today, there is some ambiguity when it comes to Charter principles and the assessment of their implementation in practice. While, on the one hand, the image of a controversial relationship between the United Kingdom and other parts of Europe is too often used for political reasons (on both parts of the Channel), on the other, a number of features of the UK system of local self-government are in fact quite distinctive when compared to many other countries (although considerably less so, e.g. in comparison with the Northern European countries).

### **3. HONOURING OF OBLIGATIONS AND COMMITMENTS**

41. The United Kingdom ratified the European Charter of Local Self-Government (ECLSG) on 24 April 1998; it entered into force on 1 August 1998.

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30. Smith, Local Government in England: do we comply with the European Charter of Local Self-Government? (2013), p. 2.

### 3.1. **Constitutional developments**

42. Three specific constitutional features of the United Kingdom have important consequences for local government and its relations with the UK government and/or devolved governments.<sup>31</sup>

- Above all, it is well known that the UK has an “unwritten” Constitution. This means that there is neither one single constitutional document defining all institutions and procedures, nor a Constitutional Court. As a consequence, there is no constitutional provision for local government (or any other institution) and thus nothing which is or can be entrenched against Parliamentary amendments.
- In addition, the description of the United Kingdom as a “Union State” highlights the fact that rather than being unitary, it is in reality made up of four countries which retain territorial and cultural distinctions of their own. Despite the supreme legislative authority of the UK Parliament, separate legislative provisions apply for the different countries.<sup>32</sup> Differentiation and asymmetries have therefore always characterized the structure of local government.
- Thirdly, the process of devolution gave legislative competence in respect of local government to the assemblies and governments of Northern Ireland, Scotland and Wales. To some extent, Greater London can also be considered a special case of its own.

### 3.2. **Local self-government: the European Charter on Local Self-Government**

43. Since the previous Congress Recommendation of 1998, various waves of radical reforms due to the change of political majorities and government have produced important and radical changes in local government. However, the following main elements continue to distinguish local self-government in the UK and have to be taken into account when assessing Charter compliance of the current state of local government in the UK:

- a) local authorities are comparatively large, both in terms of territory and of population (in common with the “northern” tradition);
- b) there is a strong emphasis on efficiency and economy in service delivery;
- c) the legal framework is characterised by the power of tradition and common law; statutory law is often made up of detailed *ad hoc* provisions for the assignment of single functions. In spite of the “general power” for local authorities introduced by the Localism Act 2011 in England, numerous functions are still based on separate and sectorial legislation (as in other countries);
- d) the devolution process has changed the overall picture, making it even more differentiated and complex.

#### 3.2.1. *Institutional arrangements and devolution of competences*

44. The origins of local government go back to the Middle Ages. It developed into a recognisable, democratic form of local government in response to the industrial revolution and the emergence of a class of urban poor people. In England and Wales, the Local Government Act 1888 created 66 County Councils, plus the London County Council, all run by elected councillors. The distinction between rural areas (with the county as the principal unit) and urban areas (cities, boroughs) still characterises, to some extent, today's England; by contrast, the devolved territories have opted for unitary authorities in more recent times. Scotland has developed separate local government institutions for 700 years with its jurisdiction being kept separate from the rest of the UK. Between 1707 and 1999 the UK Parliament had to legislate separately for Scottish local government. This is now devolved to the Scottish Parliament.

45. Despite the great importance of traditions, especially in a constitutional context based upon conventions, it cannot be overlooked that since the 1970s, changing political majorities have produced various waves of radical reforms of territorial government in England, sometimes contrasting with the

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31. According to the analysis by Himsforth, *Local Government in the United Kingdom*, in: Moreno, Angel-Manuel (ed.), *Local Government in the Member States of the European Union: A Comparative Legal Perspective*, Madrid (2012), p. 663.

32. Even before devolution, with (combined) provisions for England and Wales on the one hand and separate provisions for each of Scotland and Northern Ireland.

deep-rooted traditions on which the system of local government is based in the UK.<sup>33</sup> The metropolitan counties and the Greater London Council were abolished in 1986, with a further round of unitary local reorganisation taking place in 1996-98. A further round of reorganisation took place in April 2009. Since 1980 there have been over 20 major structural reforms in the UK public sector. Today's system of local authorities with comparatively large populations as well as a wide range of competences<sup>34</sup> is the result of both elements, traditions and reforms, which exercise a strong influence.

46. The aims of these reforms corresponded to different conceptions of the proper role of local government as provider of local services which might also be managed by others (including private subjects). Although local democracy has always to be balanced with the efficiency and efficacy of providing services, the changes in this balance have affected the debate on the very legitimacy of the basis of local government - the more so in times of the global financial crisis. In general, "there has been a declared preference for an attachment to ideas of efficiency and economy, which has, in successive reorganisations, generally produced reforms in the direction of larger, rather than smaller authorities"<sup>35</sup>.

47. As a result, flexibility and differentiation based upon elements of historical tradition characterise the current system. In total there are 433 local authorities in the United Kingdom. 353 of these are in England, 32 in Scotland, 22 in Wales and 26 in Northern Ireland.

48. Traditional two-tier systems (England) co-exist with all purpose, single-tier systems (Northern Ireland, Scotland, Wales, but also some areas in England). Their powers are different between the three (in practice four) separate jurisdictions.

49. Regarding the legal foundations of local government in England, the general tendency has been to frame legislation for the general structure of local government and the composition and organisation of local authorities in Local Government Acts. Thus, the basis for the current legislation is still the (heavily amended) Local Government Act 1972 which also includes outline provisions for local authority competences and finances. However, most substantive legislation regarding the functions of local authorities has been traditionally adopted in separate and detailed sectorial legislation.<sup>36</sup>

50. In general terms, since 2010, the coalition Government has expressed the intention to devolve powers and functions to local government "where possible and appropriate", in particular through the Localism Act 2011. This is a massive piece of legislation (nearly 500 pages). Under the unifying theme of 'localism', three main policy areas are addressed: local government, planning and social housing. However, the powers and functions of councils are set out in numerous different pieces of legislation and regulation, covering many issues including planning, housing, waste management, environment, local transport and other issues.

51. Today's Scottish local government structure is the result of the 1996 reorganisation,<sup>37</sup> the legislative basis for which was the Local Government (Scotland) Act 1994. Before 1999, all legislation on local government in Scotland emanated from the UK Parliament. On 1 July 1999 the Scottish Parliament was established and has the power to enact primary legislation relevant to local government. Local authorities in Scotland may only act within the powers bestowed upon them by the Scottish Parliament, although much pre-1999 UK legislation is still in force.

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33. The "considerable flexibility over time", even regarding structures of local government is underlined by Himsworth, *Local Government in the United Kingdom* (2011), p. 665, with the example of parish councils in England and community councils in Wales overridden in the early 20th century. Relegated to minor functions, these are not seen as "principal local authorities" any more and consequently not included in the scope of the application of the Charter.

34. Himsworth, *Local Government in the United Kingdom* (2011), p. 664, groups the UK together with Northern and Scandinavian countries quoting CEMR studies showing an average population of UK local authorities as over 151.000, compared with an EU average of 5.500.

35. Himsworth, *Local Government in the United Kingdom* (2011), p. 665.

36. Himsworth, *Local Government in the United Kingdom* (2012), p. 666, with a list of specific Acts as examples, such as the Education Act 1996.

37. The pace of consolidation of Scottish councils has been drastic and fast: from over 1000 in 1900s, to 430 in 1928, 232 in 1947, then to 65 in the 1974 reform and to 32 since 1996. This makes the Scottish Councils among the largest in average size and population in Europe.

52. For Wales, some of the principles of the Charter are reflected in the Government of Wales Act 2006, and equally in the UK Local Government Act 2000,<sup>38</sup> which grants powers of community initiative and contains a duty for its 22 local authorities to promote the economic, social, and environmental well-being of their area.

### 3.2.2. Territorial issues

- England

53. Two-tier local government used to be the standard in England and has been retained in some areas where a total of 27 “shire county” local authorities form the upper tier and include, within these county councils, 201 district councils as the lower tier. Through the reorganisation of previously two-tier areas, 55 all-purpose single tier “unitary authorities” have been created (in many cases according to the 2007 Act). These two different types of local authorities do not necessarily reflect a distinction between urban and rural areas.<sup>39</sup> In addition, in six metropolitan areas there are 36 all-purpose metropolitan councils as well as the Greater London Authority as a special case (Greater London is divided into 32 London Boroughs and the City of London; see below). Below the district level, civil parishes exist, with limited functions, though not uniformly.<sup>40</sup>

54. Some districts may have a status as boroughs (granted by Royal Charter) or cities, although a number of boroughs have also been converted or upgraded to city status by virtue of having such status conferred upon them more recently. Borough and City status accords no extra powers in law and, contrary to perception, is not related to any single factor such as population size or religious significance, but only to the existence of a royal edict.<sup>41</sup>

55. In Scotland, Wales and Northern Ireland, the former two-tier system has generally been replaced by all-purpose unitary authorities:

- Scotland

56. Since 1996, there are 32 “Councils” in Scotland covering the bigger cities as well as rural areas and the islands and a population of almost 5.3 million people (2011 census).<sup>42</sup> The geographical extension of these unitary authorities ranges from 26 square miles in Dundee to 12,437 square miles in the Highlands (a huge area equivalent to the surface of Belgium), while their population ranges from under 20 000 people in the Orkney Islands Council area to over 600 000 in the Glasgow City Council area. In eight areas, “joint boards” of several councils were responsible for police, fire and rescue services) but now there are national organisations (“Police Scotland” and “Scottish Fire and Rescue Services”). Below the council area level, there are varying levels of area committees in the larger rural council areas, and many small community councils which have few if any powers beyond being a forum for raising issues of concern. Altogether, there are 1 223 elected councillors.

- Wales

57. The 22 councils or principal areas in Wales, established in 1996, are also unitary local authorities which are referred to as a “county”, “county borough”, “city” or “city and county” and can be classified as mainly urban or mainly rural. There are 10 county boroughs, 9 counties, and 3 cities/cities and counties. The police and fire services are delivered on a joint basis. In legislation, these authorities are also referred to as ‘principal areas’. In terms of population size, they range from 348 500 residents (City and County of Cardiff) to 55 000 (Merthyr Tydfil County Borough). Local authorities are responsible for around £ 4 billion of public expenditure a year, and currently employ around

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38. See [<http://www.legislation.gov.uk/ukpga/2000/22/contents>].

39. The unitary authorities and the district councils may include both, urban and rural areas, while the upper tier in two-tier systems often has a predominantly rural character; Himsforth, *Local Government in the United Kingdom* (2011), p. 666.

40. Parish or town councils exist for villages and small towns; they only rarely exist for communities within urban areas (city councils).

41. Today city status is granted by the Crown acting on the advice of the Prime Minister, usually in connection with a specific event; historically the decision to confer city status was centred upon the monarch. Stevens, Andrew, *History and many post-war reforms shape local government in UK* (10 April 2012), at [[http://www.citymayors.com/government/uk\\_government.html](http://www.citymayors.com/government/uk_government.html)].

42. Scotland has one of the lowest ratios of inhabitants to local municipality in the developed world, with – on average – more than 160.000 inhabitants per council.

140 000 staff, serving 1 254 councillors. Below the council level, there are 735 town and community councils with powers similar to English parish councils.<sup>43</sup>

58. Wales has six areas with city status, which is conferred by Letters Patent issued by the ruling monarch in the UK. The capital city Cardiff, Swansea and Newport are all located across South Wales. Since 1996 these cities have operated as unitary authorities, i.e. there is no difference in practice between a City/City and County Council (3 in total), a County Council (10 in total) or a County Borough Council (9 in total). Historically, the other three “cities” in Wales, Bangor, St David’s and St Asaph (city status granted by Letters Patent on 1 June 2012) have qualified as “cities” on account of their Cathedrals rather than population.

- Northern Ireland

59. There are currently 26 unitary, local councils of Northern Ireland. Belfast as a capital city does not have special status or competences related to its status; all 26 councils have the same powers with no or little differences. A territorial re-organisation is under way by which local authorities will be reduced to 11 (the number of councillors will be reduced accordingly, from currently 582 to 462). Elections for the 11 new authorities are scheduled on 22 May 2014; the merger process will be completed by April 2015. For this reason, various representatives of UK government authorities have expressed the position that the inclusion of Northern Ireland in the Charter’s application will be examined only after the implementation of the merger in 2015.

### 3.2.3. *Relations between central and local authorities*

60. The Department for Communities and Local Government (DCLG) is responsible for supporting local authorities in England. It is charged with crafting legislation, regulations and policy that guide the governance and organisation of local authorities in England. DCLG is also the body responsible for giving central grant funding to local authorities in England.

61. The principles and procedures of the relationship between central and local government in England are currently stated in the Central-Local Concordat of 12 December 2007 signed between Her Majesty’s Government and the Local Government Association (LGA) which is a non-binding text. This Concordat envisaged a renewed Central-Local Partnership (originally set up in 1997) through which regular high-level meetings would take place and which would monitor the operation of the agreement. In 2010 the Political and Constitutional Reform Committee (PCRC) of the House of Commons decided to conduct an inquiry to explore constitutional and practical issues around the possibility of codifying (or formally writing down) the principles and mechanics of the relationship between central and local government. In January 2013 the PCRC published a report ‘The prospects for codifying the relationship between central and local government’. The government responded to that report in May 2013 insisting on the introduction of “policies, linked to legislative change where necessary, [...] rather than seeking to establish a more rigid, constitutional blueprint through a statutory code.”<sup>44</sup>

62. In Scotland the Concordat between the Scottish Government and COSLA of 2007 launched a new dynamic of partnership working between both levels of government. Among some additional financial guarantees, it developed the Single Outcome Agreements and Community Planning which are unique features in central-local relationships in Europe. As the relationship changed over time, some of its key principles were confirmed by the “Statement of Ambition” of 2012.<sup>45</sup>

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43. See the recent formal agreement between the WLGA and “One Voice Wales” (representing town/community councils) on cooperation to support local democracy and improve public services [<http://www.wlga.gov.uk/media-centre/new-agreement>].

44. “The Government’s approach is therefore to introduce policies, linked to legislative change where necessary, that increase the powers of local institutions, enhance local accountability and transparency, reduce barriers that prevent people from doing things for themselves and reduce bureaucratic and regulatory burdens that take up time and energy ... we believe this provides a more effective means to deliver reforms rather than seeking to establish a more rigid, constitutional blueprint through a statutory code.” Secretary of State for Communities and Local Government, Government Response to the House of Commons Political and Constitutional Reform Committee Report: The prospects for codifying the relationship between central and local government, May 2013. [[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/197672/29289\\_Cm\\_8623\\_Proof\\_V0\\_2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/197672/29289_Cm_8623_Proof_V0_2.pdf)]

45. Statement of Ambition (2012), see website [<http://www.scotland.gov.uk/Topics/Government/local-government/CP/soa>].

63. The four local government associations in the United Kingdom play an important role, gathering representatives from local authorities from different political backgrounds and giving local government an overarching voice. The associations negotiate with the central government and with the devolved governments, respectively (see section 3.2.5.). Consultation is a current practice. However, in many cases it is informal and not based upon legal guarantees.

#### 3.2.4. *Financial resources*

64. The financing of local government in the United Kingdom remains relatively centralised. Overall, local government revenues are derived mainly from grants (48.5%), taxation (27.3%) and other revenue sources such as fees and sales (24.2%).

- English local governments' revenue is composed of about 15.4% autonomous taxation, 13.1% shared taxation, 48.2% grants, and 23.3% other revenue sources (including 7.5% sales, fees and charges).
- Scottish local government revenue is composed of about 10.4% autonomous taxation, 10% shared taxation, 59.9% grants and 20% other revenue sources (including 11% sales, fees and charges).
- In Wales local revenue is composed of about 13.7% autonomous taxation, 9.1% shared taxation, 60.3% grants and 16.9% other revenue sources (including 8.7% sales, fees and charges).
- In Northern Ireland revenue is composed of about 66.5% autonomous taxation, 9.5% grants and 24% sales, fees and charges.<sup>46</sup>

65. The Greater London Authority Act (1999) provides the Greater London Authority with a power to raise council tax (a "precept"). This is collected by London Boroughs and passed on to the authority. The Authority's revenues are also derived from a central government grant (largest share), a share of the business rates generated in London, and from fees and charges.

66. The consequences of the financial crisis have led to dramatic financial cuts in local government's budgets (see below).

#### 3.2.5. *Autonomy and freedom of association*

67. There are four organisations of local authorities in the UK:
- a. the Local Government Association for England and Wales (LGA),
  - b. the Welsh Local Government Association (WLGA), which is a constituent part of the LGA but fully autonomous regarding Welsh affairs,
  - c. the Convention of Scottish Local Authorities (COSLA),
  - d. the Northern Ireland Local Government Association (NILGA).

They co-operate on a range of issues, especially on those regarding the "reserved powers" of the UK Government (in particular welfare and benefits). Besides a range of *ad hoc* and informal exchanges, a UK forum of the four organisations meets quarterly for that purpose.

#### 3.2.6. *Status of the capital city*

68. There is no special status for London due to its function as the capital of the United Kingdom. Its metropolitan character has, however, led to early distinct forms of governance compared to the rest of the country. The London County Council (1889-1965) was followed by the Greater London Council (GLC, 1965 -1986), conceived as a strategic tier of local government. It covered all-purpose London Boroughs, with some *ad hoc* joint arrangements in housing and education.

69. Following its abolition in 1986, its powers were dispersed between the Boroughs (housing, education in inner London), central government (transport) and some joint arrangements (planning and waste). The 1998 referendum paved the way for the resumption of this strategic tier in 2000 in the old GLC boundaries. The new Greater London Authority (GLA), however, does not provide direct services like its predecessor. By contrast with the GLC, it is primarily a strategic body working with the

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46. A collective work of Dexia Crédit Local Research Department, Sub-national governments in the European Union – Organisation, responsibilities and finance, Dexia Ed., La Défense, 2008, pp. 635-640; Committee of the Regions (CoR), Study on the Division of Powers between the European Union, the Member States, and Regional and Local Authorities (2012) [[http://cor.europa.eu/en/documentation/studies/Documents/division\\_of\\_powers/division\\_of\\_powers.pdf](http://cor.europa.eu/en/documentation/studies/Documents/division_of_powers/division_of_powers.pdf)]

32 London Boroughs and the City of London. It also enjoys indirect supervisory powers over the Metropolitan Police and London Fire Brigade, while the Mayor of London controls Transport for London.

#### 4. ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY IN LIGHT OF THE EUROPEAN CHARTER ON LOCAL SELF-GOVERNMENT ON AN ARTICLE BY ARTICLE BASIS.

This analysis is based on the last recommendation.

##### 4.1. *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.

70. The current situation of local government seems to be the result of historical evolution, various layers of reform and *ad hoc* measures rather than an overall national scheme or system of local government. At present, the United Kingdom does not have a written constitution, or any specific legal guarantees for the principles of local self-government. Although it has ratified the Charter without any reservation (see below, Article 12), the Charter's principles are neither expressly nor specifically incorporated in legislation. The principles are neither directly applicable nor can local authorities refer to it in case of judicial review. Courts might use the Charter, as should the legislator, as an aid to interpretation regarding domestic legislation in local affairs.

71. Placing the Charter on a statutory basis would be a move towards such a constitution and would represent a fundamental and historic shift in the constitutional arrangements based upon constitutional conventions. Devolution (in particular the debate on the future of Scotland) and the new government's commitment to "localism" have started a debate on the codification of local government legislation.<sup>47</sup>

72. In 2011, the new Political and Constitutional Reform Committee of the House of Commons (PCRC) undertook an inquiry into "Prospects for Codifying the Relationship between Central and Local Government" in England, in which the prospects for "incorporating" the Charter have also been considered. In its report, the Committee presented a draft Code for illustrating the essential elements necessary for a new relationship between central and local government. It recommended a statutory status for such a Code and proposed to enhance this status by a degree of "entrenchment". The Committee also suggested some "next steps" in order to achieve the adoption of such a Code.<sup>48</sup> In its response in May 2013, the Government commented sceptically on the proposal of an entrenched code as this would "support an increasingly litigious culture".

73. Constitutional or legislative entrenchment of local government is not easy in the UK legal system(s). An important parallel might be drawn with the European Convention on Human Rights which was incorporated by the Human Rights Act 1998 and thus become enforceable although not really entrenched as its repeal by Parliament is still possible.<sup>49</sup> In its Report, the PCRC referred to the option of incorporation of the Charter, rejecting it in favour of the proposed draft Code which is said to

47. See e.g. Himsworth, Prospects for codifying the relationship between central and local government, in Public Law 2013, 703, as well as Local Government Association, evidence to the House of Commons (October 2012) at [<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/656/656iivw79.htm>].

48. PCRC's Third Report, "Prospects for codifying the relationship between central and local government" (January 2013), vol. I. In its Fourth Report the PCRC has discussed the issue of a constitutional process and a written Constitution; see PCRC's Fourth Report "Do we need a constitutional convention for the UK?" (25 March 2013).

49. This approach is stressed by Himsworth, Prospects for codifying the relationship between central and local government, in Public Law 2013, 703.

be in line with the Charter's principles while at the same time better reflecting the specific features of the situation in the UK.<sup>50</sup>

74. The rapporteurs would recall, however, that while the UK is already bound by the Charter (including its claim for entrenchment "where practicable"), the differences between the four systems of local government in the country are considerable and destined to increase due to different priorities and instruments. If this process continues, a "Magna Charta" on local government as a common frame of and for the four systems might make sense in order to give common and fundamental principles visibility. The Charter provides such a frame.

75. As in the other parts of the country, there is no constitutional protection of local government in Scotland and the principle of subsidiarity is not defined in domestic legislation. The Scotland Act does not recognise the right to local self-government. In strictly legal terms, the status, shape and powers of local authorities are therefore totally dependent on the Scottish Parliament which has the power to unilaterally impose changes.<sup>51</sup> Effective relationships between local government and the Scottish government are therefore mainly based on good will and trust. During the visit, however, the Scottish Minister for Local Government and Planning has repeatedly underlined the importance of the "partnership approach" and the Government's intention to give local self-government constitutional protection in case of Scottish independence.<sup>52</sup>

76. In the context of the debate on the proposed Community Empowerment (Scotland) Bill,<sup>53</sup> COSLA had suggested to use the Bill for embedding local governance in legislation and to give a statutory basis to the right to local self-government. Interestingly, the proposal suggests using the Charter for that purpose, replicating the model of integration of the ECHR into the UK domestic legal system. The Human Rights Act 1998 placed obligations on public bodies to observe the ECHR provisions. It is also binding for legislation. COSLA representatives informed the Congress delegation during the visit that, in a similar way, the provisions of the Additional Protocol could provide an elegant way of promoting a comprehensive approach to protect citizen rights at the local level and taking a first step to implement the Charter on which the Protocol is based. According to COSLA, the Community Empowerment (Scotland) Bill could and should be used for putting the right to local self-government on a statutory footing. This would set an important precedent. Concretely, a statutory duty on Ministers might be introduced in the Bill whereby Ministers of the Scottish Government, while exercising their functions, must observe and promote the principles and provisions of the Charter. This would be practically feasible as placing a duty on Scottish Ministers, which refers to external treaties, would be similar to the approach already used for placing the ECHR in UK legislation. Although this is no constitutional protection, it would reduce the chance for Scottish legislation on local government to be (unilaterally) revoked.

77. Local authorities in Wales provide statutory services as set out in legislation and are empowered by laws made at the UK and Welsh levels to provide other services. Although the services provided by local authorities are subject to laws, strategies and targets set and monitored mainly by the Welsh Government, local authorities do have discretion in providing and delivering those services in their areas. The responsibilities of local authorities are quite extensive and listed in numerous pieces of primary and secondary legislation passed by the UK Parliament and the National Assembly for Wales.<sup>54</sup>

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50. PCRC's Third Report (January 2013), vol. I, paras 22-26.

51. The complete reorganisation in 1996 initiated through the then Conservative UK government might be considered a historical precedent.

52. In its White Paper on Independence, the Scottish Government has committed itself to enshrine the status of local government according to Charter principles in a written Constitution for Scotland, if a majority for independence will be the outcome of the referendum on 18 September 2014, Scottish Government (2013) Scotland's Future: Your Guide to an Independent Scotland, see pages 47, 353 and 368 [<http://www.scotland.gov.uk/Publications/2013/11/9348/0>]. Conversely, the "Better together campaign" has indicated a willingness to consider devolving further powers to local authorities, see Shannon, 'A new vision: local government after 2014' in Holyrood Magazine, (2013) March 23 issue.

53. From 6 June to 26 September 2012 the Scottish Government consulted on a range of ideas for a proposed Community Empowerment and Renewal Bill; see the Summary Analysis of the Responses (11 February 2013) [<http://www.scotland.gov.uk/Publications/2013/02/4397>]; for consultation on its current version, the Community Empowerment (Scotland) Bill, see [<http://www.scotland.gov.uk/Publications/2013/11/5740>].

54. See [<http://www.assemblywales.org/abthome/role-of-assembly-how-it-works/governance-of-wales.htm>].

### Conclusions as regards compliance with Articles 2 and 3

78. Constitutional or legislative recognition and entrenchment of (the right to) local self-government does not exist in the UK. Nor are the principles expressly incorporated into domestic legislation. In the Rapporteurs' opinion, compliance with the Charter means more than (implicit) compliance with its spirit. By introducing a "general power" for local authorities, the Localism Act 2011 has taken an important step into this direction in England, but the Charter requirements are not completely satisfied in terms of compliance. By contrast in Scotland, the issue of constitutional or legislative protection via a new Scotland Act depends on the outcome of the referendum.

#### **4.2. Article 4: Scope of local self-government**

##### **Article 4 – Scope of local self-government**

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|---|---|
| 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.   |

79. The previous Congress Recommendation (1998) admitted that it would be "difficult to develop a general competence of local government in all fields" although the distinction between local government's own tasks and tasks delegated [were to] be better clarified". In UK tradition, detailed sectorial legislation is used to identify the authorities on which powers are directly conferred upon. As there is no foundation in a written Constitution, there is also no pre-established "list" of subject matters. As seen above, successive reforms have produced a complex set of bodies which are responsible for delivering public services at the local level. Furthermore, they have general powers, such as recruiting staff and acquiring and managing property. They also have powers to adopt bye-laws, in general terms as well as regarding specific services.

##### *4.2.1 England*

80. Since 1998, Parliament has continued to confer specific and separate powers and duties to local authorities in important areas of public affairs. In England local authorities have the following competences:

- *County councils* are responsible for providing schools,<sup>55</sup> social services, and public transport services, highways, libraries and youth services (in some counties also fire and rescue services).
- *District councils* are responsible for providing local services, including council housing, gyms and leisure facilities, local planning, recycling and refuse collection, licensing, building control and street cleaning.<sup>56</sup>
- *Unitary authorities* in England are responsible for all local services.
- The *Greater London Authority* (GLA) shares responsibilities with the London Boroughs in the areas of economic development transport, health, police, fire and emergency planning, environment, including waste and climate change, culture, housing and planning.

55. However, many (especially secondary) schools are now academies or free schools and are the responsibility of central government and not county councils.

56. Several county and district councils share responsibility for leisure and sports facilities as well as for waste collection/disposal and recycling.

81. Councils provide over 700 services altogether.<sup>57</sup> Most services are mandatory (their performance is a duty by law), such as operating an alcohol licensing regime under the Licensing Act 2003. Some mandatory functions are tightly controlled by central government, resulting in a similar level of service across the country (e.g. the administration of housing benefit). Other requirements such as the library function leave councils with some discretion over the level and type of service they provide. Some council services and functions are discretionary. They range from large economic regeneration projects to the removal of wasp nests. Councils have a general power to charge for discretionary services; they can also charge for arts and entertainment activities, sport and recreational facilities.

82. In parallel, further authorities operate and provide services at the local level, each with different relationships with local authorities, e.g. the National Health Service, Fire and Rescue Authorities, National Park authorities etc. With regard to the components (precepts) of council tax levied and redistributed to other agencies or authorities, it should be noted, that Police and Fire and Rescue services are precepting authorities whilst the National Health Service is not.

83. For England, the latest Localism Act (2011) introduced novelties in three main policy areas:

- a. Local government and communities- the general power of competence for local authorities and the community rights (Community Right to Build, Right to Bid and Right to Challenge);
- b. Planning reforms including changes to planning enforcement rules
- c. Housing reforms including reforms to social housing tenure and council housing finance.

84. Through the Localism Act 2011, Councils were given a “General Power of Competence” allowing them to do “anything that individuals generally may do”. This does not overrule specific legislative curbs on local authority powers contained in other Acts of Parliament, but is intended to clarify potential grey areas where it is unclear if local authorities have the power to undertake certain functions and activities. Thus, the “general power” can only be used to do something which is not already covered by any other statute. By consequence, functions already regulated by statute, such as education, housing and homelessness and highways, can be carried out with only limited discretion.

85. Guidelines and directives from Ministers are frequent. Very often enabling legislation, i.e. secondary legislation and guidance is used. Many interlocutors provided the Rapporteurs with practical examples for detailed regulations and instructions, such as how often local news is to be published and how often rubbish has to be collected.<sup>58</sup> They criticised these regulations as the manifestation of an attitude of paternalism and mistrust vis-à-vis local authorities.

- Consultation

86. The time-frame is not established in a general way and for all cases, but depends on the concrete subject, in particular on the nature and the possible impact of a proposal. Thus, the period for consultation varies and might range from 2 to 12 weeks (compared to a general period of 12 weeks under the previous government).<sup>59</sup> This uncertainty and time-constraints due to the – possible – short duration of the consultation period might make forms of participatory democracy within the local authority concerned difficult.<sup>60</sup>

#### 4.2.2 Scotland

87. The powers of the 32 unitary local authorities in Scotland are conferred by statute and include mandatory powers (providing schooling for 5-16 year olds and social work services), permissive

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57. LGA, The LGA quick guide to local government (December 2011), p.3, with a summary table of Councils' main services and responsibilities and further reference (Department for Communities and Local Government website); see also table at p. 10 on the type of local authority responsible for major services.

58. The Government states that there is widespread compliance with the Code of Recommended Practice on Local Authority Publicity which sets out a series of principles for local authorities to follow. The specification of the frequency of the publication of local authority newspapers is considered a response to a specific concern relating to unfair competition to local newspapers from council publications funded by the taxpayer. By contrast, the frequency of residual waste collection is not mandated, but DCLG Ministers have recently provided guidance on weekly rubbish collections.

59. Cabinet Office, Guidance on Consultation Principles (2010).

60. Smith, Local Government in England (2013), p. 21, points to an example of apparent non-compliance of the government with the time-frame set in its own 2010 Guidance. In the consultation on “Protecting the independent press from unfair competition” responses had to be given within four weeks, and the consultation took place – against the rules stated in the Guidance – during the local election period.

powers (economic development, recreation services), and regulatory powers (trading standards, environmental health and issue licences for taxis and public houses). However, in reality, the distinction between mandatory, permissive and regulatory powers is far from clear cut because specific pieces of Scottish legislation sometimes also require local authorities to have a supporting, complementary or supplementary role to that of the Scottish Government.

88. Scottish Councils deliver a wide range of services to their area; these include housing, local public transport and roads, social work, education for 5-16 year olds, certain social services, power to advance well-being, leisure, parks and recreation, culture, libraries, museums, waste management, environmental protection, health and public safety, licensing, consumer protection, community planning and control, economic development and regeneration, registration (electoral registration) and elections.

89. Regional bodies covering more than one council area continue to deliver some services, such as health, which remains a national government competency managed through regional structures. However, in practice, statutory functions for local government remain defined through a vast and scattered array of legislation which has never been codified. The Scheme of Delegation and Administration used by many councils cover over 100 separate pieces of legislation that either confer powers or impose duties upon them<sup>61</sup> and some of which are over 200 years old. These lists are also constantly evolving to reflect the new provisions passed by the Scottish Parliament.

90. While devolution has led to greater influence and access for local government and allowed for partnerships of interest with the Scottish government, it has not led to further decentralisation of power to local government, and has been argued by some to have reduced the importance and powers of local government. Since devolution, there has been an increase in the concentration of public services. The Labour and Liberal Democrat governments of 1999 and 2003 removed criminal justice from local government and some transport functions (while delivery of services remained local).<sup>62</sup> The 2011 SNP government removed police and fire services. COSLA criticises a strong centralisation agenda of the Scottish government pointing to the creation of single Police and Fire Services (April 2013) as an illustrative example, as these services were previously accountable to, and funded through, local government. This has been strongly criticised by many interlocutors as unnecessary centralisation. The Scottish Government underlined that its policy has been to strengthen the connection between services and local communities through a new, formal relationship with each local authority and, additionally, through the Community Planning Partnership approach (for the connection with the new Fire and Police services).

- Public service reform in Scotland

91. The Local Government in Scotland Act (2003) provides a framework for the delivery of public services introducing three elements which are particularly important for their improvement:

- a) *Best Value*: The Act places a statutory duty upon local authorities to secure Best Value (by examining how services are delivered and ensuring the most effective and efficient means of delivery);
- b) *Power to Advance Well-Being*: Local authorities have the discretion to do anything they consider likely to promote or improve the well-being of the area and/or people within that area, provided it is not prohibited by legislation. The Guidance on the Act suggests a number of ways in which this power may be used;<sup>63</sup>
- c) *Community Planning*: The Act places duties on local authorities to initiate and facilitate Community Planning, involving other public, private and voluntary sector partners in the process. It places a duty on Scottish Ministers to encourage community planning.

92. The focus on fostering innovative practices for the delivery of public service continued with the signature of the Concordat 2007 between the Scottish Government and COSLA. This Concordat

61. See, for example, the Moray Council 'Scheme of Delegation' (2011) [<http://www.moray.gov.uk/downloads/file70892.pdf>].

62. Although Local Government representation continued on the new regional structures, interlocutors argued that these caused a confusion and dilution of the democratic mandates. In the Community Justice case a proposal is being made by the Scottish Government to return the strategic planning role to Councils.

63. As an example, the powers are being actively used by all Scottish Councils to make 'crisis payments' to people in their communities who are in very difficult circumstances, and in relation to community care grants.

created at the time a new culture of mutual accountability across public services for the outcomes that are delivered locally.

93. On the local level, Community Planning Partnerships (CPPs) are statutory bodies under the Scottish local government law bringing together public bodies, voluntary organisations and businesses to agree on strategic priorities for their area, showing how those outcomes will contribute to the Scottish Government's overarching National Outcomes. CPP arrangements are unique in a European context because they are not just consultative processes, but provide community representatives with a direct role in deciding how key local policies are implemented in the area. CPPs were recently reviewed in a "Statement of Ambition" agreed between COSLA and the Scottish Government in April 2012.<sup>64</sup> According to the agreement, new statutory provisions will ensure that all public services and not just local government are required to actively take part in the process (overcoming a weakness in the original design).

94. Single Outcome Agreements (SOAs) are an important part of community planning and focus on the outcomes of public service delivery at local level. Each Community Partnership agrees a Single Outcome Agreement based on 15 key national outcomes using a range of national and local indicators while establishing priorities and use of resources that reflect local circumstances and needs. The Scottish Government and local authorities are equal parties to the SOA and to some extent can hold each other to account for the delivery of specific commitments. The Government considers SOAs as an alternative to ring-fenced conditions.

95. The Scottish Government intends to give legal foundation to some forms of civic or community engagement in the forthcoming Community Empowerment (Scotland) Bill. The Scottish Government and COSLA agree that people should become increasingly engaged in co-producing services or supporting them to take control of local services and assets.

- Consultation

96. The Scottish Government regularly consults local government, both in terms of drafting policies (Green and White Papers) as well as legislation. Consultation takes different forms, such as public consultation, bilateral meetings, task forces and conferences (either bilateral or with a range of stakeholders). For example, these might be used to formulate a Scottish position on UK or EU legislation, oversee intergovernmental discussions, or monitor legislation and programmes. In spite of existing good practice, local government does not enjoy consultation as a legally defined right. Arrangements emanate instead from non-binding guidance and best practice guidelines at ministerial and civil service level (although some issues like renewable energy and planning do require statutory consultation before change, including with some local authority associations).<sup>65</sup> Consultation is highly variable in terms of the level, the range of issues, and the degree to which it is binding. As a result, consultation with local government can be *ad hoc* or fail to have an influence on the Scottish government. For major policy changes, the general 12 week consultation period (which mirrors the UK Government's standard public consultation period) can also be too short (or include holidays, meaning that local government has to anticipate changes well ahead of formal consultation).

#### 4.2.3 Wales

97. The general power of competence for local authorities in England, provided for in the Localism Act 2011, does not extend to Welsh local authorities for whom the powers granted under the Local Government Act 2000 remain in place.

98. Local authorities in Wales are responsible for developing, planning and providing a wide range of statutory and discretionary services. They lead local partnerships through Community Strategies, Local Service Boards and other formal arrangements.<sup>66</sup> Certain services, such as education, must be made available according to duties set out in Welsh and UK legislation. Some elements of other

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64. See "Statement of Ambition" (2012) [<http://www.scotland.gov.uk/Resource/0038/00389822.doc>].

65. See Scottish government website [<http://www.scotland.gov.uk/Resource/Doc/160377/0079069.pdf>].

66. As outlined in the November 2009 agreement, 'A new understanding between the Welsh Assembly Government and Local Government in Wales', available in internet at [<http://wales.gov.uk/topics/localgovernment/publications/newlgwag/?lang=en>].

services, such as housing standards, transport and highways, environmental health, leisure and tourism, housing and social services, are provided at the discretion of individual authorities.

99. However, the WLGA is critical of the regulatory impact assessment and the process for assessing the impact of new responsibilities under the new primary law-making powers. The impression is that the Welsh Government exercises these powers without much strategic oversight, placing duties on councils that have financial consequences.<sup>67</sup> However, planning policy is largely devolved. Overall, this results in a fragmented, case-by-case approach to decision-making.

100. In terms of efficiency, the efforts of local authorities in Wales to improve performance and management structures has been driven in recent years by the Wales Programme for Improvement (WPI), introduced in Wales in 2002 as statutory guidance to local authorities on how they should discharge their Best Value duties. Greater flexibility for local authorities was introduced in 2005 with the statutory guidance that was issued in that year. The WPI evolved further with the introduction of the Local Government (Wales) Measure 2009.<sup>68</sup>

#### 4.2.4 Northern Ireland

101. Northern Ireland councils' powers and duties include direct, representative and consultative functions. Direct functions enable councils to provide public services in areas such as: recreation, environmental health, waste management, street cleansing, tourism, economic development, consumer protection, the enforcement of building regulations, provision of cemeteries, the issuing of miscellaneous licences, dog control.

102. Representative functions permit councils to nominate representatives in various statutory bodies established to administer regional services such as education, library, health, drainage and social services, and fire protection. Consultative functions allow councils to represent the views of their population on the way in which regional services are operated throughout each district. The consultative role covers centrally administered functions such as planning, roads, water and conservation. District councils are to be consulted - either by statutory obligation or by voluntary agreement - regarding proposals which affect their area.

103. The current 26 councils can only take action within the framework provided for in the statute. This framework sets out the duties, functions and responsibilities of councils which may be either mandatory or discretionary. Legislation recently introduced in the Northern Ireland Assembly will provide the new councils, to be established from 1 April 2015, with a general power of competence. This power will enable a council to take any action unless there is a law which expressly prohibits the proposed action.

104. Since the re-organisation of local government in Northern Ireland in 1972, planning has been carried out at central government level with local councils being consulted. After the announcement of a major reform programme for the planning system in Northern Ireland, the Northern Ireland Executive had agreed upon reform proposals in February 2010 and planning powers should have been transferred to local authorities on 1 April 2015. Applications for development in the council area were to be decided by local planning officers working in the 11 new councils; councils were also be responsible for developing an area plan for their area allowing residents of the same area to play a key role. Only key strategic planning applications should have remained with planners in the core Department. However, on 23 October 2013, Northern Ireland Environment Minister Durkan announced that he will not proceed with the Planning Bill currently before the Assembly because of legal concerns regarding amendments to the Bill in June; the Bill is thus blocked.<sup>69</sup> Provisions in the Planning Act (Northern Ireland) 2011 (which has already been passed by the Assembly) will allow for the transfer of the majority of planning functions to local councils.

67. Energy issues have been controversial in the allocation of devolved and non-devolved powers in Wales. Responsibility for consenting smaller projects generating under 50 MW rests in Wales, while the UK Government is responsible for larger projects involving 50 MW and over.

68. Wales Programme for Improvement (WPI)

[<http://wales.gov.uk/topics/localgovernment/partnership/progimprove/?lang=en>] and

[<http://wales.gov.uk/legislation/programme/previouslegislation/assemblymeasures/localgovernment/?lang=en>].

69. Legal concerns were expressed in particular concerning those amendments introducing powers of the First and Deputy Ministers to set up Economically Significant Planning Zones as well as limiting judicial review; see [<http://www.niassembly.gov.uk/Assembly-Business/Legislation/Primary-Legislation-Current-Bills/Planning-Bill/>].

105. A new statutory duty of community planning is to be introduced in April 2015 in order to promote the development and implementation of a shared vision of councils, statutory bodies and the community sectors and voluntary sectors through a process of cooperation. Northern Ireland Executive agencies and departments will participate in these community planning partnerships. The aim is to create a shared understanding of local issues for better coordination of service delivery and sustainable development.

106. In Northern Ireland, most administration is undertaken by boards, notably Housing Councils, Health Boards and Trusts, Youth and Labour Services, education and library boards. These are currently appointed by the Northern Ireland Executive with representatives from local government; however, usually the elected representatives are left in a minority-position in the boards. Some interlocutors have pointed to the fact that these agencies (“Quangos”) with nominated joint boards are not included in the Local Government Bill, which could be useful in order to strengthen the elected components in the boards.

#### Conclusions as regards compliance with Article 4

107. Although local government certainly has discretion to exercise its functions, the ability of local authorities to discharge their responsibilities sometimes appears to be highly restricted by central government. Guidelines and directives from Ministers are frequent. According to many interlocutors, this is due to the centralist culture of governance across the UK as well as to a certain level of mistrust vis-à-vis local authorities. This is reflected in citizen disinterest and belief that most (important) decisions are anyway taken in London by central government. England is often called one of the most centralised states in Europe with comparatively little autonomy at local government level.<sup>70</sup> Perhaps surprisingly, COSLA comments on the situation in Scotland in almost identical terms: “Scotland is one of the most centralised countries in Europe.”<sup>71</sup> The situation in Wales also shows that local government risks remaining subject to detailed intervention by the devolved government. In Northern Ireland, the effects of the reform will show whether the influence of “Quangos” can be reduced. In the Rapporteurs’ opinion, their relations with local government ought to be included in the Local Government (reform) Bill.

108. The rapporteurs consider that the system is overall in compliance with Article 4; however, they recommend a reduction of governmental powers in all four entities to remove unnecessary burdens from local authorities and to strengthen their autonomy.

109. Regarding consultation of local government, again there is general compliance with the requirements of Article 4. That being said, the rapporteurs would suggest that the relations between the respective governments and local authorities would generally benefit from more institutionalised, uniformly (time-)framed and legally guaranteed consultation arrangements for local government. In particular, any time-frame given should take into account the necessity or opportunity for local authorities to consult their local population, at least regarding important issues.

#### **4.3. 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.

110. Local authorities owe their current territorial shape and size to local government legislation. Voluntary mergers are permissible under the law. The Local Government Boundary Commission for England is now responsible for the overall examination of local government boundaries and structures. Established by the Local Democracy, Economic Development and Construction Act 2009, it is responsible for three types of review: electoral reviews, administrative boundary reviews and structural reviews. The latter type is used to establish whether one or more single, all-purpose councils (unitary

70. Smith, Local Government in England, p. (art. 4).

71. COSLA, Background Report on Scottish Local Government (2013), p.1. However, in the same opening paragraph listing characteristics of Scottish local government, COSLA also highlights the innovative practices for public service delivery such as CPPs and SOAs.

authorities) should be established in an area instead of the existing two-tier system. The Commission was established on 1 April 2010, when it took on the functions of the Boundary Committee for England.<sup>72</sup>

111. Similar bodies with equivalent functions, despite some differences in the width of the mandate, exist in Scotland, Wales and Northern Ireland: Local Government Boundary Commission for Scotland, Local Democracy and Boundary Commission for Wales and the Local Government Boundaries Commissioner for Northern Ireland.<sup>73</sup>

112. Concerns have been expressed during the meetings with council leaders in Scotland regarding a possible amalgamation of the Shetland Islands with the Highlands which would lead to an increase of already significant travel costs as well as to the perception of a loss of democratic control. According to the Scottish Government there are no plans to amalgamate Shetland and Highland Councils.

113. In Wales, the Local Government (Wales) Measure 2011,<sup>74</sup> passed by the National Assembly in March 2011, gives Welsh Government Ministers wide powers to amalgamate two or three local authority areas and to issue statutory guidance on collaboration. This has been criticised by the WLGA.

114. A major review on territorial organisation of local government is underway in Wales. A Commission on Public Service Governance and Delivery has been established in April 2013 (the Williams Commission) in order to assess the way in which public services are organised and delivered in Wales, and how they may be improved. This broad mandate covers all devolved public services and the Commission will report to the Welsh Government by December 2013. It has been welcomed by the WLGA as an opportunity for reflection on Welsh public services in the context of huge pressures as well as for a debate on local democracy. However, recent comments by the First Minister of Wales that 22 local authorities are 'unsustainable' in light of a dramatically changing and challenging financial settlement have furthered speculation about a possible reduction in the number of local authorities in Wales.<sup>75</sup> It seems important that all proposals for structural change are supported by hard evidence. In addition, the WLGA asks for a range of key tests to be carried out as well as for clear assurances by the Welsh Government on retaining local government's functional integrity as well as for considering the increase of democratic control over other public services such as public health and community services. Thus, according to the WLGA any form of significant reorganisation in Wales would need to be aligned with a review of local democracy.<sup>76</sup>

115. The reform of local government in Northern Ireland will see the reduction from currently 26 councils to 11. Legislation to finalise the boundaries of the new 11 local government districts was approved by the NI Assembly on 12 June 2012.

116. The criteria for review of boundaries within Northern Ireland are established by Article 50 of and Schedule 4 to the Local Government (NI) Act 1972. Within this framework, Local Government Boundaries Act (Northern Ireland) 2008 provided for the appointment of a Local Government Boundaries Commissioner to make recommendations on the boundaries and names of the 11 new districts; a final recommendations report was submitted to the then Minister of the Environment in June 2009. Throughout the process, the recommendations were subject to extensive public consultation. The Commissioner's final recommendations with modifications agreed by the Executive were given effect by the Local Government (Boundaries) Order (NI) 2012. The next local government election which will take place on 22 May 2014, together with elections for the European Parliament, will be to

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72. The Local Government Boundary Commission for England [<http://www.lgbce.org.uk/about-us>].

73. Scotland [<http://www.lgbc-scotland.gov.uk/>], Wales [<http://ldbc-wales.gov.uk/?skip=1&lang=en>] and Northern Ireland [[www.boundarycommission.org.uk](http://www.boundarycommission.org.uk)].

74. See [<http://www.legislation.gov.uk/mwa/2011/4/contents>].

75. The Commission reported on its findings on 20 January 2014 in the Report of the Commission on Public Service Governance and Delivery. See:

[<http://wales.gov.uk/topics/improving-services/public-service-governance-and-delivery/report/?lang=en>]. The report covered a wide range of issues relating to the public sector but, specifically relating to boundaries, it recommended reducing the number of Welsh unitary authorities from 22 to 10-12. Worries have been expressed by interlocutors during the visit that a reduction from the current 22 to a probable number between 7 and 12 local authorities might be artificial (taking the 7 Health Boards as a model) and reduce their political accountability too much.

76. For the WLGA's position see [<http://www.wlga.gov.uk/wlga-corporate-publications/wlga-evidence-commission-on-public-service-governance-and-delivery/>].

the 11 new local government districts; these will become fully operational on 1 April 2015, when the 26 current councils will cease to exist.

#### Conclusions as regards compliance with Article 5

117. The regulations and procedures regarding (the change of) local boundaries require consultation of concerned local authorities and, consequently, are in compliance with this article.

#### **4.4. Article 6: Administrative structures**

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

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|---|--|
| 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. |

- England

118. Councils can choose how to organise their governance and operations. Not all local authorities are therefore structured in the same way. The internal organisation of English councils may be structured in three different ways (under the Local Government Act 2000), but the system of local governance was changed from the traditional committee system to the UK style cabinet:

- The traditional committee system works by delegation to (sub-)committees, each dealing with a separate sector, with ratification by the main body (going back to Local Government Act 1972). No distinction is made between cabinet and backbenchers. This system could be continued in areas with populations below 85,000 residents.
- The cabinet system as an executive form of governance in which decisions are made by leader elected by the councillors or by a mayor elected by voters, who appoints a cabinet. Each cabinet member (also: executive member) is responsible for a particular sector. Policy decisions are made by the Cabinet on the whole and only major policy such as Local Plans and Local Transport Plans (LTP) need ratification by the full Council. The sectors can be chosen by the leader. For example, in York there is a Leader with Cabinet and the Lord Mayor chairs the Council.
- An executive governance model with a directly elected Mayor supported by a cabinet and specialist advisers appointed by him is the third main system (not to be confused with the fact that all local authorities have mayors or chairmen as ceremonial/civic figureheads; in some larger and older cities these are called Lord Mayor).<sup>77</sup>

119. In all cases, the full council meeting in which all councillors may vote is the sovereign body. It agrees the budget, sets the policy framework, appoints chief officers and makes fundamental decisions. There are Regulatory Committee and a Licensing as well as a Planning Committee and (sub-)committees for Audit, etc.

120. Councils operating with executive governance arrangements must establish Overview and Scrutiny Committees (OSCs) to ensure that decisions made by the council and its partners are held to account. For councils operating with the committee system, it is discretionary. OSCs reflect the political balance of the councils, but it is up to councils to determine their overview and scrutiny arrangements and there is considerable local variation on the number of committees and their mandate.

121. As to the relationship between elected councillors and officers, there is a clear distinction: Councillors, through decisions of the full council and the executive, set the overall policy of the council. The Cabinet members are usually senior members of the Council and cover specialist portfolios, such as housing/property, regeneration, neighbourhoods, children, adults and finance. They work with the

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<sup>77</sup>. Where an authority is called a district council, it will have a chairman and where the authority is a borough or city council it will have a mayor (or a Lord Mayor).

Chief Executive and Corporate Directors in those areas. Senior officers, led by the chief executive and chief officers are responsible for advising the cabinet and scrutiny committees on policy and are responsible for implementing councillors' decisions and for service performance. Officers have a duty to give unbiased professional advice.

122. The Chief Executive is the statutory Head of Paid Service, responsible for staff appointments. He/she works directly with the Mayor/leader. Corporate Directors are appointed by the Chief Executive and a panel made up of the Mayor/leader and relevant Cabinet members. They are responsible for the delivery of frontline services, staff and financial management.

123. The Localism Act 2011 opens the choice for English councils and local people to decide how their council should be governed. It appears that the determination of own internal administrative structures and their adaptation is possible. Various interlocutors pointed out that speed and quality of decision-making has much improved making local government far more efficient and effective than it was 20 or 30 years ago. Also accountability has generally become more transparent.

124. So far, however, outside London only in 10 Councils referendums have been held on the introduction of directly elected mayors, and only one, Bristol, voted in favour (2012).<sup>78</sup> In the UK there is no enthusiasm for the Mayoral model, despite government attempts to stimulate it. This might be due to the importance given to the value of tradition (creating a kind of "path dependency" with the UK parliamentary model). While some have argued that, as the government attempted to impose elected mayors without sufficient consideration of the impact on the current system, people were not convinced they could make it work. Leaving the choice to councils and people appears the best option.

- Scotland

125. Each local authority in Scotland is governed by a council. The council is made up of councillors directly elected by the residents in the population of the area they represent (referred to as a council ward). The Leader of the Council is also often the leader of the largest single political grouping in the council.<sup>79</sup> Each ward will have three or four councillors. In total, there are 1223 elected councillors who are normally elected every 4 years (legislation in 2009 moved local government to two consecutive five-year terms to decouple local government elections from elections to the Scottish Parliament).

126. In the full council meeting all councillors meet to debate and take the key decisions of the Council. These include electing the convenor (equivalent to Mayor in other parts of UK), appointing councillors to all committees and panels, deciding on strategic objectives and corporate policies and setting the annual budget and council tax.

127. However, provisions in the Local Government (Scotland) Act 1973 allow local authorities to devolve most decision-making to a committee, sub-committee or officer of the council. Traditionally, authorities have tended to operate through a structure of committees and sub-committees. There is no requirement for councils to adopt a particular political decision-making and scrutiny structure: it is a matter for each council to decide what the most appropriate structure is for its particular circumstances and context. In recent years, some councils have streamlined their committee structures, by reducing the number of service-specific committees, and instead concentrating on broader, more cross-cutting thematic areas. Others have dispensed with committee structures in favour of executive structures, in which responsibility for most strategic decisions is delegated to an executive of between 5 and 13 councillors. In this kind of structure, it is the role of non-executive elected members to scrutinise the executive's activities. There are limits to the number of remunerated senior Councillors which entails a form of administrative control.

128. The Chief Executive, who is the head of the Council's paid staff and its principal adviser on policy matters, has the responsibility for ensuring the efficient, effective and equitable discharge of

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78. Liverpool and Leicester decided to move to the mayoral system of governance without a referendum.

79. Each local authority elects a civic leader, the Provost or Convenor, who chairs council meetings and acts as a ceremonial figurehead for the area. In the cities of Glasgow, Edinburgh, Aberdeen and Dundee, the Provost is known as the Lord Provost.



- 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.

#### 4.5.1 *Article 7: Conditions under which responsibilities at local level are exercised*

- England

133. In the report of 1998, problems were reported regarding discrepancies between the salaries of Council Leaders or other councillors working full time for local authorities and the top officials in the same authorities. It was also reported that Councillors receive very low allowances for their work. (1997 CoE Report, 6). Mayors, Council Leaders and Members have political roles which, in case of backbench members, are not supposed to be full-time jobs. They receive allowances (as opposed to salaries) which are recommended by an independent commission and are the agreed by the full council. According to interlocutors, the allowance is low, but compared to earlier years more in line with the work expected. According to the LGA, a councillor receives £10.000 per year on average, while a Council leader or executive member will receive £34.000 per year (average). By comparison, a Member of Parliament receives a salary of £65.000. For example, in the Borough of Hackney, where Mayor and Cabinet Members devote their full time to their respective roles, their remuneration is at the level of a second or third tier Local Government Officer.

134. The Government's approach is, on the one hand, to enable councils to determine the amounts to be payable to elected members, having regard to local circumstances and, on the other, to sharpen the accountability by having to appoint a local panel whose members are required to be independent of the council. Thus, each local authority has an Independent Remuneration Panel which provides the council with advice on its Members' Allowances Scheme and the nature and level of allowances to be paid. The council must have regard to this advice when reviewing or amending its scheme. The considerable differences between different councils in terms of remuneration are explained in that allowances are based on the size of the ward.

135. However, various interlocutors have pointed to difficulties in attracting genuinely qualified people for elected functions in Councils. Some interlocutors have been both part and full-time during their political career. As part of the difficulties, they reported the inflexibility of employers who find it difficult to accommodate the time spent doing council business even in case of part-time councillors. The lack of career structure for people in local government and not having pensions were also mentioned. The pensions issue appears as unfair and sends a wrong message to young people, who might be interested in engaging in politics. Any system should ensure that people are at least not financially disadvantaged at any time when working in public service and for community. Government was criticised by many interlocutors for preferring and promoting a part-time logic of engagement in the councils. This is simply not considered possible due to the workload which is to be managed. Many people already see local authorities as a body which has less impact and meaning as most decisions are taken in London and consider them as functional to the implementation of central government policy.

- Scotland

136. Until 2007 elected members in Scotland did not receive salaries for their work, even if this was equivalent to a full time job. Councillor salaries were introduced in 2007 in order to widen access as well as to recognise the time and dedicated effort of elected members to their local communities. The basic salary for elected members is now £16.234 per year (frozen since April 2009) which was based on an assessment of the work burden anticipated for an average councillor (it represents around 75% of the average Scottish wage). The Scottish Local Authorities Remuneration Committee has recommended a substantial increase which was declined by government. A full-time engagement is thus often not considered as attractive, in particular for senior members.

- Wales

137. In Wales, allowances payable to councillors are set by the Independent Remuneration Panel for Wales each year.<sup>83</sup> All local authority members are to be paid an annual basic salary which was set as a maximum amount in previous years; from 2012-13 onwards, the Panel determined that every councillor in Wales would receive the same basic salary in order to achieve consistency. Councils can then decide to pay a certain number of senior salaries to the authority's leader and deputy leader, to members of the executive, to chairs of committees, to the leader of the largest opposition group, and to leaders of other political groups. The maximum proportion of the membership of a council which can be paid such a senior salary is limited depending on the size of the council. Local authorities are required to publish and maintain an annual Schedule of Member Remuneration on the salaries received by all members.

#### *A Code of Conduct for Local Government*

138. Codes of Conduct to ensure that the highest standards of behaviour are maintained by local authority councillors and members (such as board members) of certain public bodies are more and more part of the local government landscape in member States.

139. The Standards Board for England, which previously regulated such matters, was abolished under the provisions of the Localism Act 2011. Now, local authorities are required to draw up their own codes of conduct for their councillors, consistent with criteria set out in the Localism Act 2011 and in line with the seven "Nolan principles" for public life (selflessness, integrity, objectivity, accountability, openness, honesty, leadership).<sup>84</sup>

140. A Code of Conduct was introduced in Scotland with the Ethical Standards in Public Life etc. (Scotland) Act 2000. A Public Standards Commissioner (formerly the office of the Chief Investigating Officer) receives complaints by any citizen or resident about non-compliance and the Standards Commission for Scotland shall hold hearings into alleged breaches of the Codes.

141. For local government in Wales, Part III of the Local Government Act 2000 established a new ethical framework requiring all councils to adopt a code of conduct for their members (Section 51). The Local Authorities (Model Code of Conduct) (Wales) Order 2008 sets out what is expected of members and co-opted members of relevant authorities in Wales.<sup>85</sup> Every local authority must have a Standards Committee responsible for adopting a local code of conduct, for monitoring conduct, and for adjudicating on cases of misconduct. All councillors are required to sign the code of conduct to ensure they uphold the highest standards. The Public Services Ombudsman for Wales will hear written complaints about alleged cases of misconduct and can take several courses of action including referral of cases to the Adjudication Panel for Wales. In September 2012, the Public Ombudsman issued a second guidance on the Code of Conduct.<sup>86</sup>

142. Another problem mentioned in the 1998 Congress report as discriminatory practice was unequal treatment related to "surcharges". Unlike central Government officials, local elected representatives and appointed staff could be held financially responsible for their decisions, not only if they went against the norm but also if they were guilty of "gross negligence". It seems that the situation has changed for the better, as interlocutors told the Congress delegation that surcharges no longer apply in local government in England. The sole sanction against Members under the Localism Act 2011 is criminal prosecution for any failure to declare a "disclosable pecuniary interest, without reasonable excuse, on an interest form or to declare full or relevant interest at meetings. These interests include matters relating to a Member, or their spouse/partner, related to employment, trade or vocation; sponsorship to carry out role as a Member; election expenses; contracts with the Council; beneficial interest in a property.

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83 Independent Remuneration Panel for Wales [<http://wales.gov.uk/irpwsb/home/?lang=en>].

84. The Committee on Standards in Public Life was established in 1994, initially to deal with concerns about unethical conduct amongst MPs. Lord Nolan, a judge, was its first Chairman.

85. Local Authorities (Model Code of Conduct) (Wales) Order 2008, [<http://www.legislation.gov.uk/wsi/2008/788/contents/made>].

86. Public Ombudsman for Wales, Code of Conduct for members of local authorities in Wales (September 2012); available at: [[http://www.ombudsman-wales.org.uk/~media/Files/CodeofConductguidance\\_E/Code%20of%20Conduct%20CCBC%20%20NPA%20amended%20April%202013%20ENGLISH.ashx](http://www.ombudsman-wales.org.uk/~media/Files/CodeofConductguidance_E/Code%20of%20Conduct%20CCBC%20%20NPA%20amended%20April%202013%20ENGLISH.ashx)].

#### 4.5.2 Article 8: Administrative supervision of local authorities' activities

- England

143. In the UK system there is no direct equivalent to administrative supervision and control of local authorities by specific institutions or procedures. External controls include specific administrative controls by ministers or other bodies, financial control by external auditors, legal control by the courts and controls by ombudsmen on grounds of maladministration.<sup>87</sup>

144. Legal control by the courts may be exercised, if a statute makes a direct provision for an appeal to a court against a decision of a local authority, such as licensing, school-choice and child protection decision-making. Much more common is the exercise by the courts of their inherent power of judicial review. It can be considered a supervisory jurisdiction over local authorities (and other public bodies) by means of which any person with *locus standi* can challenge the validity of a local authority act or decision being *ultra vires*. The grounds may be substantive (no powers for action), based on procedural error or on irrationality; also a breach of the ECHR can be used as the basis of challenge (according to the Human Rights Act). These options for judicial challenge guarantee the respect of the Rule of Law as well as for Human Rights in the activities of local authorities.

145. Ministers who retain an overarching responsibility for sectors, such as school education, social services and transport, still maintain some powers to influence and steer the activities of local authorities formally responsible. These forms, often framed (by Ministers) as “partnership”, lead to overlap and sharing of responsibilities. Central government has the authority to intervene in instances where there have been concerns over childcare, education or the management of any failing council. The Government underlines that intervention in a local authority is rare and only as a last resort; there have been only three interventions by the Secretary of State in the last 10 years on corporate management failings. There are regular central government inspections of schools, as well as children and adults social services, e.g. through the Care Quality Commission (CQC) as the regulating body for adult care services, the Office for Standards in Education, Children’s Services and Skills (Ofsted) is an independent body reporting to Parliament which carries out inspections on site in local authorities; their inspection frameworks are under revision and will be replaced by a single one for child protection and looked after children.

146. During these controls and inspections, both legal compliance and efficiency of local government are monitored. Various interlocutors expressed the feeling that these controls are aimed at reducing and controlling – and thus limiting – powers, but they also aim to ensure high quality of service to the community and safeguard vulnerable people. In 2007, 1100 performance indicators were counted for reporting to central government. Although the number of data returns which local authorities are required to submit was significantly reduced when the National Indicator set was replaced with the Single Data list in April 2011<sup>88</sup>), this may still raise the question of whether accountability is foremost guaranteed by central authority or through democratic means by the local people.

- Wales

147. In Wales, a case has been reported in which executive functions of a council have been taken over by commissioners appointed by the Welsh Government due to political in-fighting and a history of poor performance (Isle of Anglesey Council).

148. Section 2 of the Local Government (Wales) Measure 2009 requires Welsh local authorities to make arrangements to secure continuous improvement in the exercise of their functions.<sup>89</sup> Section 28 of the Measure provides Ministers with powers of assistance, while section 29 permits Ministers to intervene in and direct a local authority which is failing, or is at risk of failing to comply with the Measure. They may also direct a local authority to collaborate with another. These powers go beyond the power of the Secretary of State in the Local Government Act 1999.

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87. Himsworth, *Local Government in the United Kingdom* (2012), p. 678-680.

88. See for the single data list [<https://www.gov.uk/government/publications/single-data-list>].

89. *Local Government (Wales) Measure 2009* [<http://www.legislation.gov.uk/mwa/2009/2/contents>].

149. After decades of infighting and political instability in the Isle of Anglesey Council, the Welsh Government Minister for Local Government decided to suspend the executive functions of the Council in May 2011 and install five commissioners to run affairs. Despite being the most severe intervention into an individual local authority in the history of Welsh local government, the move was supported by the WLGA, who, in its capacity as an improvement body, worked with the Council in response to the recommendations of the Wales Audit Office's Corporate Governance Inspection in 2009.<sup>90</sup> Local Government Elections were suspended for one year with the election taking place in May 2013, along with the return of executive functions. Since then internal functions within the Council have improved.

150. In addition to the case of Anglesey, the Welsh Government has introduced 'special measures' and commissioners or 'Ministerial intervention boards' in six other Welsh local authorities to address what it perceives as serious shortcomings in education. While between 1999 and 2008 only one Local Education Authority in Wales was placed into special measures requiring intervention, between 2011 and 2013, some seven authorities have been in this category; out of these authorities five are some of the smallest in population terms which suggests that scale does appear to have a major impact on education performance.<sup>91</sup>

#### *Local government audit*

151. The extent and purpose of top-down administrative supervision has been an issue for both English and Welsh local authorities for many years, and "the Audit Commission's role in relation to 'value for money' is probably to be seen as a form of supervision, even though normally this leads to public reporting, rather than any legal action against the supervised authority".<sup>92</sup>

152. Recommendations (1998) regarding administrative supervision have expressed concern on the role of the Audit Commission in England and Wales and doubts about its independence from central Government; pointing to the dangers of combining auditing with judgments of effectiveness. This referred to the duty of the Audit Commission to report on the achievement of "Best Value" objectives by local authorities. In England there was also a system of overall monitoring (Comprehensive Performance Assessment, since 2009: Comprehensive Area Assessment), which has been abolished by the coalition Government. Also the Audit Commission in England will be abolished by April 2015 and the Accounts Commission in Scotland is (to be) abolished in early 2014. Central responsibility will be shifted to local authorities which have to contract out to private accountants while continue with the monitoring of "Value for Money".

- Scotland

153. External audit is compulsory and is carried out by a range of audit and scrutiny bodies including the Accounts Commission for Scotland. All of the reports are available online, including the latest annual audit overview covering key local government issues.<sup>93</sup> Performance improvement, self-evaluation, and other improvement resources are facilitated by a specific agency: the Improvement Service, which has developed a new benchmarking framework allowing significant cost and performance comparison across the 32 Councils.<sup>94</sup>

- Wales

154. Since 2004, responsibility for the audit of Welsh local authorities has been transferred to the Auditor General for Wales.<sup>95</sup> In Wales, the Local Government (Wales) Measure 2009 makes provision to ensure greater collaboration between local government auditors, regulators and inspectors so as to maximise value. It introduced significant changes to performance and inspection work in local government which requires the Auditor General for Wales to undertake an overall improvement

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90. Source: WLGA response [<http://www.wlga.gov.uk/press-archive/wlga-responds-to-wao-report-into-anglesey-county-council/>].

91. WLGA position: [<http://www.wlga.gov.uk/wlga-corporate-publications/wlga-evidence-commission-on-public-service-governance-and-delivery/>].

92. Smith, Local Government in England (2013), p. 26.

93. See at: [[www.audit-scotland.gov.uk/](http://www.audit-scotland.gov.uk/)].

94. Further information at: [<http://www.improvementservice.org.uk/benchmarking/>].

95. See website: Auditor General for Wales [<http://www.wao.gov.uk/>].

assessment for each council. This assessment is undertaken in collaboration with Estyn and Care and Social Services Inspectorate Wales. The Inspection Wales Programme has established a Development Group which has tasks that include planning, leading and coordinating further developments in joint working under the Measure.<sup>96</sup>

155. Public body decisions are also subject to judicial review which may also be interpreted as a kind of external supervision. In a UK context, judicial review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body. Relating exclusively to the legality of the decision or action, this kind of supervision does not seek to influence or reduce local authority powers. It shall guarantee that public bodies stay within their statutory powers, but keeping them (and the use of their resources) focused on these, it might also lead to more efficiency.

- *Accountability*: complaints system and Local Government Ombudsman

156. In England, the Local Government Ombudsman investigates complaints from individuals regarding “injustice in consequence of maladministration” caused by acts and decisions of local authorities. Today, the mandate includes a duty to scrutinise “service failure” as well as the ability to initiate investigations themselves.<sup>97</sup> Complaints regarding Council services can be addressed to the Ward Councillor or to the Mayor; complaints on other matters might be referred to the inspection bodies of central government, such as Ofsted. Residents can make a formal complaint to the Council about services that have either been provided or denied. The complaints process provides for three stages. If these are exhausted, and the complainant is still unsatisfied with the response, a complaint to the Local Government Ombudsman is possible. The latter will assess any complaint independently. In case of a complaint against the conduct of a Councillor, a complaint can be made to the Council’s Standards Committee for investigation. The Information Commissioner is responsible for queries under the Freedom of Information Act. Structurally, in Scotland and Wales the function has been integrated into the broader offices of the Scottish Public Services Ombudsman and the Public Services Ombudsman for Wales.<sup>98</sup> Also the Northern Ireland Ombudsman is a broader office, dealing with complaints of maladministration by government and public bodies; however, he has no role in investigating individual ethical conduct by councillors.<sup>99</sup>

- The “Partnership Approach”

157. The rapporteurs have the impression that a “partnership approach” regarding relations between local and devolved government is emphasised in Scotland and in Wales compared to a more prescriptive approach adopted in England.

158. The Local Government in Scotland Act 2003 gave a statutory basis to partnership working between all agencies (such as health boards, benefits agencies, further and higher education institutions) responsible for public service delivery in an area. This partnership approach is called Community Planning. To develop this, the Act creates a new statutory body alongside the Local Authority, the Community Planning Partnership (CPP), in each municipality. Scottish local authorities are responsible for initiating, facilitating and maintaining Community Planning.

159. In Wales, relations between the Welsh Government and local authorities are governed by the 2008 Local Government Partnership Scheme,<sup>100</sup> as required by the Government of Wales Act 2006<sup>101</sup> and the November 2009 agreement, ‘A new understanding between the Welsh Assembly Government and Local Government in Wales’. The Partnership Scheme reaffirms the commitment of both levels of government to “working together in partnership, within an atmosphere of mutual trust and respect, recognising the value and legitimacy of the role both have to play in the governance of Wales”. In

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96. See at: [<http://www.inspectionwales.com/Home.aspx?SitePageID=116>].

97. See LGO website (England) [<http://www.lgo.org.uk/>].

98. See the websites of SPSO (Scotland) [<http://www.spsso.org.uk/>] and Public Service Ombudsman for Wales [<https://www.ombudsman-wales.org.uk/>].

99. For Northern Ireland see the Ombudsman’s website [<http://www.ni-ombudsman.org.uk/>]; the coordination of its work with the Northern Ireland Human Rights Commission is regulated through a memorandum of understanding. For the Human Rights Commission see the website [<http://www.nihrc.org/>].

100. Local Government Partnership Scheme 2008 [<http://wales.gov.uk/topics/localgovernment/partnership/lgps08/?lang=en>].

101. Government of Wales Act 2006 [<http://www.legislation.gov.uk/ukpga/2006/32/contents>] following the initial Government of Wales Act 1998 [<http://www.legislation.gov.uk/ukpga/1998/38/contents>].

practice however, the WLGA underlines that the extent of compliance depends on the differing administrations and the attitude of Ministers. (Legal) certainty could be strengthened in order to use the full potential of such an approach and to avoid criticism of a top down-approach in disguise.

160. The ‘Simpson review’ of local government published by the Welsh Government made 21 recommendations on how local government services could best be delivered in Wales in the coming years, with a heavy focus on collaboration between councils.<sup>102</sup> The report led to the “Compact for Change” between the Welsh Government and Welsh local government (December 2011)<sup>103</sup> in order to formalise a partnership approach across a range of council services, and to standardise collaboration in order to improve delivery and outcomes.

161. The institutional instrument for consolidating the partnership approach was the “Statutory Partnership Council” for Wales, set up (as required by the Government of Wales Act 2006) in 2009. It is an advisory body to promote cooperation between the Welsh Government and local government, as well as for the governance of central-local relations. It meets around three times a year and includes Welsh Government Ministers, representatives for the 22 unitary authorities, community and town councils, National Park Authorities and Fire and Rescue Authorities.<sup>104</sup> The Council may also establish committees and working groups. The WLGA considers the Council an effective forum for discussion and joint working, in particular in promoting cross-cutting themes such as equality of opportunity and sustainable development. However, in 2011 membership was expanded to include other public sector partners, while the Council’s focus moved to reform. At the same time the forum for discussing finances was disbanded, until reinstated in June 2013. These changes risk weakening the voice of local government.

162. Questions regarding the sustainability of such collaborative partnership approach have been raised with the recent intensification of the debate on local government reorganisation in Wales (following the establishment of the Williams Commission looking at Public Service Governance and Delivery). Governance and accountability of public services are inevitably affected by the complexity of local public services in Wales, in terms of performance management and planning regimes and the variety of local and regional collaborative and partnership arrangements. Agreement on a limited number of clear and focused priorities seems necessary with the overarching strategic direction determined by the Welsh Government, leaving maximum flexibility and autonomy to local authorities in the determination of local priorities and delivery.

163. Modelled on the experience in Wales, a Partnership Panel is to be established in Northern Ireland for the coordination across various Departments and with local government. The Local Government Bill, which was introduced in the Assembly on 23 September 2013 and which is currently at Committee Stage, provides for the establishment of such a partnership panel in Clause 106. Its members will comprise Northern Ireland Ministers and council members. Before appointing council members, the Department will be required to consult appropriate bodies that are representative of local government (at this stage the NILGA might become involved). The panel’s functions will be to advise the Northern Ireland Ministers on matters affecting their functions; make representations on matters affecting, or of concern to, those involved in local government in Northern Ireland; and give advice to those who are involved in local government in Northern Ireland.<sup>105</sup>

#### Conclusions as regards compliance with Articles 7 and 8

164. In the rapporteurs’ opinion, the situation is overall in compliance with Article 7. However, the work of executive councillors should be re-evaluated so that their status corresponds better to their responsibilities. While the status and conditions of elected representatives seem to have slightly improved compared to 1998, in particular regarding allowances, there are concerns that engagement in councils, in particular for the younger generation, is not attractive due to economic disadvantages for full-time councillors and an unequal distribution of workload. A part-time model might work for backbenchers, but definitively not as a general model.

102. Report ‘Local, Regional, National: What services are best delivered where?’ [<http://wales.gov.uk/topics/localgovernment/publications/lnrdelivery/?lang=en>].

103. <http://wales.gov.uk/topics/improvingservices/publicationsevents/publications/compact/?lang=en>

104. See website [<http://wales.gov.uk/topics/localgovernment/partnership/pcfww/?lang=en>].

105. See for the timetable and text of the NI Local Government Bill [<http://www.niassembly.gov.uk/Assembly-Business/Legislation/Primary-Legislation-Current-Bills/Local-Government-Bill-As-Introduced/>].

165. As regards audit, the Standard Boards have been abolished and the Audit Commission in England will be abolished in 2015; independent external audit will be provided for at a local level by private audit firms and local authorities now adopt their own codes of conduct for councillors. There are clear rules on conflict of interests and the situation can be considered to be satisfactory.

166. In the UK, there is no general form of comprehensive and concentrated administrative supervision. However, Ministries and other bodies that oversee the activities of local authorities have inspection powers which, in some cases, considerably influence or limit the latter's freedom and discretion in carrying out services. They do this through reporting duties and active intervention in details of local affairs. This being said, the system is generally in compliance regarding supervision. It also seems that the procedures and guarantees in case of intervention are in line with the Charter principles.

167. It will be interesting to see, whether and how the partnership approach and the co-operation experiences in Scotland, Wales and Northern Ireland will be considered in the current debate on the relations between central government and English local authorities.

#### **4.6. 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.

- England

168. Local government accounts for about a quarter of all public spending in the UK. Net current expenditure in 2012-13 was £112 billion. The three main sources of income for local government in England are government grants, council tax and redistributed business rates. Local government's 2010-11 budgeted revenue expenditure (not the same as net current expenditure) of £98 billion in 2012-13 was budgeted to be financed as follows:<sup>106</sup>

- Government grants = £57,657m in 2010-11 (55%), £56,237m in 2011-12 (57%), £46,765m in 2012-13 (50%)
- Council tax = £26,254m in 2010-11 (25%), £26,451m in 2011-12 (27%), £26,715m in 2012-13 (28%)
- Redistributed rates = £21,517m in 2010-11 (21%), £19,017m in 2011-12 (19%), £23,129m in 2012-13 (25%)

106. Overview by LGA, The LGA quick guide to local government (December 2011), p. 23.

169. Councils also receive income from returns on borrowing and investments, interest and capital receipts, sales, fees and charges and council rents.

170. Council tax makes up the majority of the difference between a council's planned budget and its central funding. In 2011-12, the government began making extra funding available to councils which froze their council tax with the objective of making local authorities more likely to freeze tax levels. Council tax freeze grants have been available in every year since and will continue up to and including 2015-16. The total Government funding for a freeze over the period of time covering 2011-12 to 2015-16 is up to £5.2billion. Under the Localism Act 2011, councils are required to hold a referendum on council tax increases if they are above a certain level as proposed by the Government and approved by the House of Commons. As Council tax accounts for only one quarter of local income; a 4% increase in council tax is needed to achieve a 1% increase in total local spending. It has also been argued by some in local government that council tax is not really a local tax because, for all practical purposes, the government decides it. However, the government's position is that local authorities have had a choice of whether to (i) freeze council tax and take the Government grant; (ii) increase council tax up to the level of the referendum threshold, or (iii) increase it above the threshold and hold a referendum for local people to either approve or veto the tax increase. In practice, the referendum obligation has operated as an effective deterrent against the raise of council tax as no authorities have so far chosen to hold a council tax referendum. In times of financial and economic crisis, it is politically hardly possible to find popular support for a raise of (council) taxes. Councils can also not revalue properties in their local area (leading to discrepancies between the market price-level and the property value). There are no further tax-raising powers, such as a tourist tax or similar.

171. Councils collect business rates (officially called National Non-Domestic Rates) on behalf of central government and pay them into a central account controlled by the Department for Communities and Local Government. These funds are then redistributed back to councils by the department on a per head basis. This reflects the basis of distribution prior to 2006-07; after that business rates were distributed on the same basis as the Revenue Support Grant (RSG). Councils do not set business rate levels, they are centrally determined. The Government has now introduced the business rates retention scheme. Operating from 1 April 2013, this scheme sees 50% of business rates paid to central government and 50% of the business rates retained by local authorities. The scheme also allows for local authorities to keep a proportion of any business rates growth, although – according to the LGA – some authorities will be allowed to keep much less than this because of the complicated arrangements for funding the scheme as a whole.<sup>107</sup>

172. A fundamental question in relation to Article 9 of the Charter is whether local government will have adequate (own) financial resources and whether these are commensurate with its functions.<sup>108</sup>

173. Following the 2010 General Election the new Coalition Government urgently began to tackle the UK's "record debts". This has led to continuous cuts in Government spending since 2010, including cuts to the grants given to local government by central government. Overall these cuts equate to a real terms reduction of at least 32% over the last four year period of the Comprehensive Spending Review (CSR). According to all interlocutors from local authorities and publications of the LGA, "this is the toughest local government financial settlement in living memory". Some councils face more than 16% of reduction in the amount of money they receive from the Government. The financial cuts mean that City of York Council faces cuts of about £60 million from the budget, over an 8 year period. Leeds is very much in the same financial position – it is just a matter of scale – they will need to make cuts to the tune of a staggering £50 million next year.

174. Even more worrying is that these changes are structural rather than temporary, as the next CSR (2015) will start from the spending control total resulting from all these changes. It appears that the

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107. According to information provided by the LGA, local authorities have also been given responsibility for funding business rates reductions, especially those in respect of successful appeals lodged against the central government agency responsible for valuations ( the Valuation Office Agency). Local authorities are also responsible for funding the impact of appeals backdated to the period before the scheme was introduced. This partial localisation of the benefits of business rates growth might thus be outweighed by the transfer of risk from central to local government regarding the responsibility for the appeals.

108. The Law Commission in England is currently reviewing the over 1,000 statutory duties placed on authorities (number according to Smith report, confirmed by a number of interlocutors); this might make financial re-arrangements necessary.

cuts have also been decided unilaterally by central government, between the Ministries, without the involvement of local authorities or the LGA.

175. The Government “de-ring-fenced” some of these grants in order to give local government more freedom over how money is spent in individual areas. In 2013/14, ring-fenced grants amounted to nearly two thirds out of a total of £88,953 million Central government grants. This continues to push local government to find further efficiencies and deliver better value for money through structural changes and innovations.

176. The delegation heard that, in April 2013, central government delegated three services to local authorities: Council Tax benefit Localisation, Social Fund and Children-on-Remand. In each case, local authorities were asked to take over additional responsibility and control costs, leading to the transfer of a significant financial risk as these services are demand dependant. This looks contrary even to the New Burdens Doctrine guidance published in 2011, according to which “all new burdens on local authorities must be properly assessed and fully funded by the relevant (government) department.”<sup>109</sup>

177. In order to support local service transformation, the Government has introduced a number of measures which include the £3.8 billion Better Care Fund for the integration of the provision of health and social care, a £300 million transformation fund for councils to fund up-front costs of service re-engineering, and the establishment of the Public Service Transformation Network.<sup>110</sup> With regard to article 9.3 (financial resources deriving from the local level), it can be observed that councils have responded to the localisation of resources, in particular to the recent financial incentives, including the localisation of business rates, City Deal incentives (agreements between the government and cities to increase the latter’s powers) and the discretion to determine council and business tax discount, in a positive way. However, as most of these financial reforms are quite recent, it is not yet possible to assess their full impact in practice.

178. The distribution of central government funding to local authorities is determined using complex distribution formulae, taking into account population and other demographic factors as well as the ability to raise revenues locally from the property tax base. The Standard Spending Assessment (SSA) was designed to provide a notional spending allocation for each local authority taking into account their needs and population. The aim was to ensure that, for the same level of services, each authority should be able to set the same average council tax, having regard to their respective property tax base (i.e. relative values). This was the original aim; by the mid-1990’s Government made it clear that SSAs were simply a measure used to distribute grants. This was consolidated in 2003-04 when SSAs were replaced with Formula Spending Shares. It was replaced from 2006-07 onwards by the ‘four block’ model which contained separate components linked to population (central share), needs including deprivation and relative costs pressures (relative need amount), respective residential property tax bases (relative resource amount) and a fourth block (damping) to guarantee a minimum level of change year on year.

179. In recent years, as a result of the reduction in expenditure to meet the Government’s spending targets, damping to reduce the year-on-year volatility of allocations between authorities has become more pronounced. This places authorities in “bands” based on their relative reliance on grant funding. As a result, one London Borough, which was entitled to a 9% grant increase under the needs formula in 2013-14, received the same percentage reduction in grant as another Borough which, on the basis of the formula, should have had a 31% grant reduction. From 2014-15 onwards there will be an even greater focus on limiting variability and giving all authorities undertaking the same services similar percentage cuts – and the link with needs/population/demographic changes will be further reduced. According to interlocutors, local grant allocations will not be recalculated on the basis of updated needs assessments until 2020/21.

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109. See New burdens doctrine: guidance for government departments (20 June 2011) [[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/5960/1926282.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5960/1926282.pdf)].

110. The Public Transformation Network is made up of officials seconded from a range of Government departments and local government officers effectively seconded to Department for Communities and Local Government, working collaboratively to co-design better local services for less and disseminate the lessons learned from the community budget pilots to help all local places who want to transform their services.

180. There are few budgetary restrictions. Indebtedness and deficits are mitigated by the Prudential Code which received statutory force by the Local Government Act 2003 and subsequent amendments. Local authorities can only borrow long-term to fund capital investment. Operating costs are funded from day-to-day resources through an active treasury management regime. Local authorities are allowed to borrow under the Prudential Code, meaning the amount of debt and other liabilities do not have an upper limit but must be affordable and prudential. The Prudential Code sets out indicators relating to affordability, sustainability and prudence to be respected. It does not apply, however, in all areas. For example, the amount of borrowing councils can undertake for the purpose of increasing local social housing supply is capped by the Government, as part of the Government's deficit reduction policies. The LGA, London Councils and the GLA are, however, lobbying for this system to be changed to allow more investment in housing.

- Scotland

181. In Scotland, local government is allocated around one third of the devolved budget of around £33 billion, giving them significant procurement power. Moreover, despite substantial staff reductions over the recent years, local authorities remain one of Scotland's biggest employers. With over 248 200 staff, they employ around 45% of the public workforce in Scotland and provide 1 in 10 jobs in Scotland overall.

182. In terms of resources, however, councils are very dependent on the Scottish Government. Budgets are not statutorily protected and councils have little statutory ability to influence the budgets they receive. But, most importantly, councils raise only a small amount of their resources locally: 80-85% of budgets come from the government, with only 15-20% raised through local taxation (council tax). Although there are negotiations with COSLA for the local government budget, ultimately the power rests with the Scottish Government.

183. The 2012-13 local government settlement was £11,5 billion (£10,9 billion in revenue funding and £0,6 billion in capital grant funding). Income generated from council tax was £1,9 billion. These figures do not include revenue from sources such as housing rents and local charges. Councils are able to borrow (under certain constraints) under the Local Government (Scotland) Act 1973. Interlocutors have underlined the importance of European funding, in particular for the infrastructure.

184. In terms of expenditure, education accounts for nearly 40% of total expenditure. A further 25% is spent on social work (but this is expected to increase rapidly due to the ageing of the population).<sup>111</sup> The remainder is spent on other services including roads and transport, planning and development and culture related areas.

185. According to interlocutors, formal ring-fencing has been reduced, leaving definitively more choice in spending,<sup>112</sup> but councils still have significantly less ability to raise and control resources locally. The Rapporteurs would suggest that, in future, the focus should shift to the joint improvement of outcomes. This would allow for an assessment of the services delivered, and leave more room for discretion to councils on how to perform them.

186. However, also in Scotland, local government budgets have been reduced in the wake of the economic and financial crisis. The crisis and long term trends such as population ageing mean that resources are diminishing while demand for public services is growing rapidly. In the 2007, COSLA and the Scottish Government signed the Concordat, freezing council tax and agreeing upon additional funding to compensate for it.<sup>113</sup> This has been criticised as a voluntary renouncement of own-decision-making powers in financial issues. Today there is ongoing discussion on the replacement of the

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111. According to COSLA, between 2006 and 2016, the number of people in Scotland aged over 65 will grow by 21%, and by 63% by 2031. For those over 75, the projected increase is 21% and 83% respectively. This presents significant challenges for local government given that the funding gap between demand for services and resources will rise to £3bn by 2016/17 (around 27% of the 2012/13 budget of £11bn). This large gap would mean that either there are significant cuts in services or, as Scottish local government has consistently argued, a solution based on integration and partnership across public services.

112. In 2007-8 £2.7 billion of local authority budgets were ring fenced, this fell to around £0.2bn in 2013-14; source: Scottish Government.

113. Sources: [<http://www.scotland.gov.uk/Topics/Government/local-government/localg>] and [<http://www.cosla.gov.uk/scottish-local-government>].

current council tax system with a fairer local tax, based on ability to pay. Proposals for the introduction of a Local Income Tax have been dropped in 2008.

- Wales

187. Local authorities in Wales receive the majority of their funding in the form of a revenue grant from the Welsh Government (RSG). The RSG is the main component of the local government revenue settlement, which comprises RSG and non-domestic rate income, which together are known as Aggregate External Finance (around 80% of local government finance). The remaining 20% comes from non-domestic rates (a national tax locally set and collected), council tax and income raised from fees and charges.<sup>114</sup> The amount of council tax people pay depends on the value of their home.

188. Local authorities decide how the money from RSG as well as some additional capital funding should be spent according to their needs and priorities. They also receive a number of ring-fenced grants, both revenue and capital, which must be spent on specific activities (e.g. grants for social care, for bus shelters or for school uniforms). The RSG funding is shared out between authorities on the basis of a population-based distribution formula. The formula is kept under review by the Distribution Sub Group, a working group under the Partnership Council's Consultative Forum on Finance.

189. In contrast to other parts of the public sector, local government has been financially sound over the 17 year period of unitary structures. Since 1996 no authority has failed to set a budget or has gone into deficit. Council tax collection rates in Wales are at a level of 96.7% of council tax billed.

190. The Welsh Government is heavily reliant on providing grants for specific purposes and (around 12% of council spend) regularises council's abilities to charge for certain services. There is a growing expectation on local authorities to deliver more with less resources and, increasingly, local government needs a more flexible financial framework. The WLGA warns that this approach is unsustainable and will most probably worsen in the coming years, given the bleak financial outlook for local government in Wales (£ 175 million reduction for 2014/15, a £ 460 million reduction by the end of 2015/16).<sup>115</sup>

191. A key issue is how to provide the necessary services for an ageing population in the context of drastic budgetary reductions alongside rising cost and demand pressures for local public services. Wales has a higher proportion of older people in its population compared with England, Scotland and Northern Ireland: currently over 700,000 people in Wales are over 65 years old (of a total 3 million population), and this number is expected to rise to over a million people in the next twenty years.

192. Another important question is whether central and devolved governments will succeed in moving beyond annual incremental budgeting and implement financial and budget strategies that cover their whole term in office. Local Government has been improving its system of medium-term financial plans since 2003/04.

- Northern Ireland

193. Local government funding in Northern Ireland comes from several sources including rates, grants and fees from services:

a) District Rate Revenue – from both domestic and non-domestic properties;

b) The “de-rating” Grant, which compensates councils for the loss of income from de-rated properties (de-rating element), and the Rates Support Grant, which is paid to councils whose needs exceed their wealth (resources element);

c) Specific Grants – paid from government departments, EU agencies to assist the financing of certain revenue and capital expenditure;

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114. Source [<http://www.wlga.gov.uk/resources-how-is-local-government-financed/>]; on Welsh local government financial statistics: [<http://wales.gov.uk/statistics-and-research/welsh-local-government-financial-statistics/?lang=en>]. The Welsh Government publishes an annual report which includes information on revenue and capital expenditure, non-domestic rates and council tax.

115. Source WLGA [<http://www.wlga.gov.uk/media-centre/175m-down-and-counting>].

d) Fees and charges – e.g. entrance fees for leisure centres.

194. The majority of district council funding, just over two thirds, is coming from the district rate (67.6%, see below). De-rating Grants and Rates Support Grant are not ring-fenced and make up 7.8% of a council's income, while Specific Grants and fees and charges, are ring-fenced for special purposes, e.g. emergency planning (Department of Environment), Construction Products Grant for a council's enforcement role and the Dereliction Grant. Together with fees and charges, these ring-fenced grants make up 23% of the total income.

195. Each council raises the majority of its income through the rating system. There are two different rates:

(a) a domestic rate for household and occupied residential properties. It is based on the capital value of a home as at 1 January 2005 and calculated by multiplying the rateable capital valuation by the domestic rate for the council area. The domestic rate is made up by the regional rate set by the Northern Ireland Executive and the district rate set by the individual council.

(b) a business rate for all non-domestic properties, such as offices, factories and shops. It is based on the rental value of the property as at 1 April 2001 and made up of a number of parts including the regional rate and the district rate set by the individual council.

196. Subject to the approval of the Ministry of the Environment, loans may be raised by councils to assist the financing or funding of capital projects.

197. Public services in Northern Ireland are not (yet) the subject of the severe cuts. Belfast City Council, for instance, is 75% self-funded from domestic and business rates whilst other great metropolitan areas in England are on average only 17.6% funded from the council tax base, or 12% in inner-London Boroughs. While the impact of the crisis has not been so severe, the budgets are relatively lower. With the prospect of new functions being transferred, the contemporary transfer of resources is necessary. As rate payers in Northern Ireland do not have the money for paying higher rates, the power to raise rates will not be sufficient for councils to guarantee a commensurate funding.

198. The Local Government Finance Act (Northern Ireland) 2011 modernised the legislative framework for local government finance. It introduced a new capital finance system and set out the legislative framework within which a district council may manage its finances and central government may regulate that activity. Control by central government is to be exercised, where necessary, through subordinate legislation and guidance. The Act also contains requirements for each council to approve estimates, authorise expenditure and fix the amount to be raised by its rates for the following year as well as report duties of the council's Chief Financial Officer. It retains the power for a council to borrow for purposes relevant to its functions (adding purposes for the prudent management of its financial affairs) and removes the requirement for approval by the DCLG. While councils are now able to decide to take a loan to refinance existing debt, they will have to comply with regulations made by the DCLG when determining an affordable borrow limit.

- Accounts and audit

199. Councils are legally required to provide annual accounts to show their financial transactions. These accounts are audited by local government auditors designated by the Ministry of the Environment. They have the power to reject expenditure which is considered not to be lawfully incurred

#### Conclusions as regards compliance with Article 9

200. Central government is able to exercise control over local government in England through the allocation of grant funding; Council tax funds only a relatively small proportion of expenditure and any attempt of raising its level above a specified threshold is subject to the referendum obligation. Moreover, business rate levels are also centrally determined, although from 1 April 2013, the business rates retention scheme sees 50% of business rates paid to central government and 50% of the business rates retained by local authorities. The scheme also allows for local authorities to keep a proportion of any business rates growth. The high share of central Government grants (a concern expressed in the 1997 CoE Report, 9) has been reduced, but remains still over 50%. While the

proportion of ring-fenced grants has also fallen compared to 1998, it is still at a remarkably high 64%. All this reflects the centralised nature of local funding in England, although the recent business rates retention scheme might mark the beginning of a change.

201. The dramatic reduction in central government grants since 2010, is a strong indicator of funding being hardly commensurate with the functions and responsibilities of local government in England. This will lead to difficult decisions with regard to where savings can be made, including frontline services in future. The financial burden seems to have become even heavier as new functions have been given or delegated, without providing for adequate financial compensation.

202. The complex formulae for the distribution of central government funding to local authorities in England has been changed continuously over the last decade producing considerable uncertainty and, it seems, effects of unequal treatment in some specific cases.

203. Local authorities have freedom to prudentially borrow in practice. However, in 2012 the Treasury capped the amount councils in England could borrow against their ring-fenced housing budgets. In November 2013, in an opinion poll, three-quarters of councillors said that their authorities would borrow to build more homes if the government's existing cap on Housing Revenue Account borrowing was lifted.<sup>116</sup>

204. In Scotland, all local authorities have accepted the terms of the Concordat on the council tax "freeze" in return for increased spending flexibility. Although the freeze is based upon an agreement, it makes them virtually totally dependent on the Scottish Government, which transfers government grants, fixes levels of non-domestic rates and has frozen the council tax, leaving almost no room for autonomous fiscal capacity.

205. Considering the severe budget cuts that local government in the UK is generally facing means that in the current economic climate financial resources will increasingly be no longer commensurate with local authorities' responsibilities. This will have huge implications on public service delivery, and possible implications for the workforce employed by local government.

206. The capacity to deliver essential public services, quality health and social care and effective and adequate community services and facilities, especially to the growing number of older people will be severely restricted by the austerity measures placed upon local government. This makes the question of commensurate finances for local government even more urgent. The Government seems committed to the introduction of a number of measures to support local service transformation.

207. The rapporteurs conclude that, given the above, the system cannot be said to be in compliance with Article 9 paragraphs 1, 2, 3 and 4 of the Charter. Local authorities do not have adequate financial resources and the prospects for the coming years appear even worse. Since the first report of 1998, which recommended to "seriously increase local government's financial capacities", the financial situation of local authorities has worsened. While local government finances are part of a national economic policy, it seems that local government is faring worse than other public sectors and national government. A diversified base of local revenue appears an urgent necessity, as Council tax is the only tax under some level of local control. However it is limited by central or devolved governments, due to the referendum obligation (England) and the freeze of council tax (Scotland). In addition, all rates are decided by governments and funding is still dominated by central government grants. In England, the new business rates retention scheme appears as a move in the right direction (diversification). Despite significant cuts, in Wales and Scotland local authorities are (still) better off financially than their English counterparts, but lacking diversity of local finances is a concern also there.

208. On the positive side, ring-fencing has been reduced and access to borrowing is guaranteed;<sup>117</sup> thus, there is compliance regarding these two issues.

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116. See article Public Finance, 14 November 2013 [<http://www.publicfinance.co.uk/news/2013/11/councillors-housing-plans-frustrated-by-borrowing-limit-poll-finds/>].

117. According to the LGA, however, there are signs of ring-fencing returning with the Public Health Grant and Better Care Fund.

#### 4.7. Article 10: Right to associate

##### Article 10 – Local authorities' right to associate

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|---|---|
| 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.  |

209. Given that by comparison with other countries, local authorities in the United Kingdom are relatively large and have considerable functions, it is no surprise that inter-municipal co-operation has not developed much. However, there are statutory powers allowing for co-operation; in particular, councils are empowered to arrange for the discharge of their functions by another local authority as well as to establish joint committees (e.g. for running combined services in urban areas in England, such as the Tri-borough in London). In addition, certain ministerial powers exist for the compulsory establishment of joint boards which are arrangements for the joint exercise of functions by two or more local authorities (e.g. joint police boards, joint fire and rescue boards). More recently, in some cases, local authorities have opted for sharing the services of certain administrative offices among them. The economic downturn and the financial cuts have produced a new trend towards co-operation in combined authorities. The latter are established by Parliamentary Order upon request which guarantees certainty and permanence (individual authorities cannot leave the authority once established).

- England

210. One English policy that should be mentioned is “Community Budgets”,<sup>118</sup> which combine local authorities and other agencies in areas of integrated services to deliver better outcomes and realise efficiency savings. This initiative began with four pilots (London, Manchester, Essex and Cheshire) working with a wide range of agencies, including local police, fire and health services. Due to their success and potential demonstrated, the Government (through the Public Service Transformation Network) are working intensively with 9 new places to support them transform the way they deliver services and spreading learning wider to all areas interested in this approach. However, they also require changes in the organisation of services under central control and pose the question of who assumes leadership in these processes.

211. In November 2011, the Greater Manchester Combined Authority used the Localism Act 2011 for obtaining a further transfer of powers from the UK central government, enhancing its powers over transport and housing and granting it competencies to fund and control schemes on its own terms. The focus is on economic growth in a functional economic area. Favoured by the historical experience of cooperation in the area, 10 local authorities came together on a voluntary basis and co-operate in particular on policing, tourism and markets. Central government supported this with financial benefits.

212. A City Region is a functional economic area based around one of the eight core cities: Birmingham, Bristol, Leeds, Liverpool, Manchester, Nottingham, Sheffield and Newcastle. Normally, the local authorities come together in a partnership. The Leeds City Region is the functional economic area, defined by the way businesses operate and residents live their lives. It is the largest city region in the UK, home to 3 million people and 100,000 businesses, and generating 4% of the UK's economic output. The Leeds City Region refers to the local authority districts of Barnsley, Bradford, Calderdale, Craven, Harrogate, Kirklees, Leeds, Selby, Wakefield and York and brings together the public and private sectors – and partners in government, education and the third sector. The partnership works to a common vision for economic prosperity.<sup>119</sup> However, partnerships involving other bodies than local authorities might bear negative consequences for local leadership and democratic accountability.

213. City Deals are an incentive for co-operation, e.g. through combined authorities. They are all different, negotiated and supported in financial terms by the central government. Although widely seen

118. [<http://www.lgcplus.com/Journals/2013/01/10/c/l/x/LGA-and-EY-Community-Budgets-Report-.pdf>].

119. Leeds City Region [<http://www.leedscityregion.gov.uk/about/>].

as positive, it is also criticised on the ground that the exclusive government funding risks creating new dependencies and forms of central patronising. As their extension to bigger towns (not to rural areas) is probable, the power(s) to set own local agendas with these forms should be strengthened.

- Wales

214. Local Service Boards (LSBs) are non-statutory partnerships across all 22 local authorities in Wales. They were set up in response to the 2006 Beecham Review's observations that local public services in Wales faced three major barriers in terms of delivering citizen centred services: culture, complexity and capacity.<sup>120</sup> Working across organisational boundaries and pooling capacity and expertise LSBs provide a platform where the leaders of local public and third sector organisations come together to take collective action to ensure public services are effective and citizen focussed. The membership, structure and approach of LSBs vary across Wales, but all have the key leaders and chief executives of the major public service providers in the area.<sup>121</sup> Concern has been expressed with regard to the domination exercised by the authorities responsible for the greatest expenditure. In recent years, local authorities have had to consider whether to focus efforts on 'deepening' relations at the local authority level through, for example, LSBs, or 'widening' joint working by collaborating across a number of local authority areas.

215. In Wales, the Welsh Government's City Regions concept shall strengthen economic development by overcoming practical difficulties due to the fact that different services are often organised on different bases.<sup>122</sup> Apart from police, powers necessary for realizing the concept are devolved. Two City Regions are developed for South Wales: the Swansea Bay City Region and the South East Wales City Region. All relevant local authorities are playing a full and central role in the development of these City Regions together with other key partners for economic development. In North East Wales (Dee region), the possibility of a cross-border City Region is being explored, but there is real concern amongst North Wales local authorities that the focus on City Regions in South Wales will be to the detriment of investment and economic development in North Wales. However, it is still too early to assess the success of this approach.

There are four organisations representing local government in the United Kingdom:

- Local Government Association (LGA)

216. The Local Government Association (LGA) is the national representation of (English and, where applicable, Welsh) local government and works with councils to support, promote and improve local government. It is a cross-party organisation that works on behalf of councils to ensure local government has a strong, credible voice with central government. It aims to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems;<sup>123</sup> it also intervenes in the legislative process, by giving evidence, publishing position papers and lobbying MPs. Two years ago, the LGA had seen its budget halved and, by consequence, had to reduce staff drastically.

217. In total, 412 local authorities are members of the LGA for 2012/13. These include English local councils, Welsh councils via the Welsh LGA, and fire, national park, passenger transport and police authorities, plus one town council.

218. "Core Cities" are a self-selected group of bigger, metropolitan cities with similar problems and lobbying interests. Arguments discussed in this forum are not limited to the local authorities in the strict sense, but also linked to City Regions. There was a controversy in spring whether they still feel represented by the LGA, but the question seems settled now.

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120. See for the Beecham Review 2006 [<http://webarchive.nationalarchives.gov.uk/20060715141954/http://new.wales.gov.uk/topics/improvingservices/strategy/policy/beyondboundaries/?lang=en>].

121. See on Local Service Boards in Wales: [<http://www.wlga.gov.uk/local-service-boards>] and [<http://wales.gov.uk/topics/improvingservices/localserviceboards/?lang=en>].

122. Source: [<http://wales.gov.uk/topics/businessandconomy/policy/cityregions/?lang=en>].

123. Source: Local Government Association (LGA) [<http://www.local.gov.uk/about>].

219. “London Councils” is a forum of and for the London Boroughs which meet together and also, sometimes, with the GLA.<sup>124</sup>

- Welsh Local Government Association (WLGA)

220. As an ‘umbrella’ organisation, the Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales; the 3 fire and rescue authorities and 3 national park authorities are included as associate members.<sup>125</sup> Originally established in 1996 primarily as a policy development and representative body, the WLGA has since developed into an organisation that also leads on improvement and development, equalities, procurement, employment issues and hosts a range of partner bodies supporting local government. With the introduction of devolution in Wales, the WLGA has played an important role in representing Welsh local authorities in negotiations with the devolved government and giving evidence in committee-meetings by invitation of the Welsh National Assembly. The WLGA members are still members also of the LGA.

- Convention of Scottish Local Authorities (COSLA)

221. The Convention of Scottish Local Authorities (COSLA) represents Scottish local government. It was formed in 1975 following local government reform of the previous year to act as an interface between local authorities and Scottish Government and the Scottish Parliament, as well the UK and EU institutions where applicable.<sup>126</sup> The organisation represents all 32 Scottish local authorities. It also acts as the employers’ association for all Scottish local authorities, negotiating on conditions of services with trade unions. In addition, there is a range of organisations representing the interests of particular professional groupings within Scottish local government, in particular SOLACE (Scotland), representing Chief Executives and senior managers in Scottish local authorities. COSLA meetings with all 32 Council Leaders are held regularly once a month plus bigger gatherings three times a year. Recently, the COSLA Convention has launched a general public debate on the position of local government in Scotland; all Councils have agreed on a vision called “*Local Matters*.”<sup>127</sup> To develop this approach further, the Commission on Strengthening Local Democracy has been launched.<sup>128</sup>

- Northern Ireland Local Government Association (NILGA)

222. The Northern Ireland Local Government Association (NILGA) is supported by the main political parties in Northern Ireland together with representatives from other parties, and is supported by elected representatives from all 26 local authorities who are members.<sup>129</sup> NILGA is involved in the reform process and consulted, in particular by evidence in the Northern Ireland Assembly. It cooperates with Irish and other UK Local Government Associations.

- Trans-frontier co-operation (Northern Ireland)

223. North/South cooperation is one of the important elements of the Good Friday Agreement for Northern Ireland. Apart from the North/South Ministerial Council, concrete trans-frontier cooperation projects and regions have been established bridging the border between Northern Ireland and the Republic of Ireland. East Border Region Ltd is a local authority led trans-frontier network with 10 local councils from Northern Ireland and 3 county councils of the Republic of Ireland engaged in a cooperation, also for access to EU structural funds (with the role of Implementing Body in the Ireland/Northern Ireland INTERREG IIIA and IVA Programmes).<sup>130</sup> It is a member of the Association of European Border Regions (AEBR).

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124. This has produced, among other documents, the “London City Charter” as a common strategic vision for the future of London.

125. Homepage WLGA: <http://www.wlga.gov.uk/about-us/>.

126. COSLA proudly highlights that it considers itself a direct successor to the Convention of the Royal Burghs of Scotland, a 700 year old institution reflecting the continuous separate existence of Scottish local government.

127. “*Local Matters*” focuses on stronger local democracy as the councils’ route to improving outcomes. It sets out four broad principles: empowering local democracy, integrating not centralising services, paying attention to outcomes not inputs and promoting local choice and accountability. See [[http://www.cosla.gov.uk/sites/default/files/documents/local\\_matters.pdf](http://www.cosla.gov.uk/sites/default/files/documents/local_matters.pdf)].

128. Commission on Strengthening Local Democracy (October 2013) [[www.localdemocracy.info](http://www.localdemocracy.info)]: 11 evidence-gathering panel sessions will be organised in the first months of 2014.

129. See NILGA’s website [<http://www.nilga.org/>].

130. See East Border Region’s website at [<http://www.eastborderregion.com/>].

224. The Special EU Programmes Body (SEUPB)<sup>131</sup> manages cross-border European Union Structural Funds programmes in Northern Ireland, the Border Region of Ireland and parts of Western Scotland. The SEUPB is one of the six cross-border Bodies set up under the “Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland establishing implementing bodies” signed on 8 March 1999 (the British-Irish Agreement of 8 March 1999). The Agreement was given domestic effect, North and South, by means of the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 and the British-Irish Agreement Act 1999 respectively. The SEUPB has a role to facilitate project participation in the INTERREG IVB Transnational Programmes which are relevant to Northern Ireland and the Border Region of Ireland and also the INTERREG IVC Programme, which is open to projects across the European Union. It functions as the Managing Authority, Joint Technical Secretariat and Certifying Authority for the INTERREG IVA and PEACE III Programmes.

225. However, according to interlocutors, in Northern Ireland structural funds and peace funds are currently under the responsibility of five different Managing Authorities as five Departments are involved in structural funds projects. Through concentration in one system, red tape could be cut and funds be managed more efficiently.

#### Conclusions as regards compliance with Article 10

226. Joint activity in the provision of services and in relation to management of an authority involves, as a result of resource pressures, a range of different forms of collaboration from formal joint committees to informal partnership arrangements. Voluntary co-operation also develops in new forms in urban areas to cope with metropolitan situations, and there is also a lot of voluntary cooperation and sharing of staff in rural areas. It is certainly an alternative to structural change. Some forms are still experimental, but the current trend might be interpreted as the beginning of a bottom-up restructuring process of local government to be systematically assisted. At least in urban areas, single tier (unitary) authorities are now standard. A balance between efficiency gains through these new forms of cooperation and sufficient guarantees for democratic accountability seems important for the future. This also leads to the question whether in the medium-term the experience with these developments should not be organically regulated in a systemic legal regulation on local government.

227. The developments in Scotland and Wales appear similar, despite differences in detail (e.g. English and Welsh City Regions). Co-operation seems a general trend also in Scotland and Wales. While in Northern Ireland the process of reducing the number of local authorities is under way, further amalgamation is subject to a (controversial) debate option in Wales and Scotland.

228. In the law-making process, consultation with local authorities in England takes place mainly through Parliament (MPs and Members of the House of Lords as well as evidence). The Rapporteurs are of the opinion that, overall, the representation through the LGA appears as efficient and effective and in compliance with the requirements of the Charter.

229. The Rapporteurs consider that the situation regarding the right to associate and to associations is in compliance with Article 10.

#### **4.8. Article 11: Legal protection of local authorities**

##### **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.

230. There is fairly limited protection against central government. In extreme cases, local authorities might approach the High Court for judicial review. The parameters for judicial review depend on whether protection of local self-government is sought against the legislature (Parliament), or the executive (central or local government). In the former case, possibilities of a judicial challenge are very limited, mainly to a breach of the rule of law or fundamental rights.<sup>132</sup> In the latter case, judicial review

131. See SEUPB's website at [<http://www.seupb.eu/Home.aspx>].

132. Apart from EU law, there is no authority for any review of an Act of the UK Parliament. This is different with the devolved legislatures.

may be possible against decisions or actions of the executive, if the public body has acted in violation of the law, such as acting outside its powers. A judicial review challenges the way in which a decision has been made, rather than analyse or weigh the result of the decision, action or conclusion reached.

231. Typical court actions concern planning decisions, housing and the reduction of the number of local authorities. In the first two cases, individuals challenge decisions or actions of local authorities (example: current planning decisions in London on enlargement of basements challenged by neighbours or provision of housing to immigrants). In the past, local authorities won some cases, defending themselves against the elimination of two-tier authorities. Also inspection powers might be challenged by judicial review (process review).

232. As the Charter is not part of domestic law, it cannot therefore be relied on as a source of substantive rights or restrictions. The Charter is neither directly applicable by the courts nor can local governments refer to it (in case of judicial review) as a ground for invalidity leading to striking down primary legislation. It might be used as an aid to interpretation (only).<sup>133</sup>

233. The number of judicial court actions related to legal protection of local authorities is still relatively small. Local authorities in fact often look for “political” rather than legal solutions, such as campaigns supported by MPs and Members of the House of Lords or through the LGA. An example is the controversy regarding the Publicity Code, i.e. the publication of freely distributed papers and magazines with information on council activities. Numerous councils wrote to central government and campaigned against the proposals. In other cases, also online petitions have been used.

#### Conclusion as regards compliance with Article 11

234. The rapporteurs consider that, despite fairly limited protection, judicial review is possible and the situation can be considered to be in compliance with the Charter.

#### **4.9. Article 12: Undertakings – declarations formulated by States, if any**

##### **Article 12 – Undertakings**

- 1 Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:
  - Article 2,
  - Article 3, paragraphs 1 and 2,
  - Article 4, paragraphs 1, 2 and 4,
  - Article 5,
  - Article 7, paragraph 1,
  - Article 8, paragraph 2,
  - Article 9, paragraphs 1, 2 and 3,
  - Article 10, paragraph 1,
  - Article 11.
- 2 Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify to the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article.
- 3 Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.

133. In one case, the Charter (Article 4 para.4) has been invoked by a local authority (among other grounds) in a challenge to procedures by the then Secretary of State to require it to become part (with others) of a new unitary authority. The English Administrative Court and the Court of Appeal stated that, like other international treaties, the Charter might be used as an interpretative aid where domestic law is ambiguous, or as a guide to the development of common law: “On issue (3) (the European Charter), [Underhill J] accepted that the Charter, though not incorporated into domestic law, might be admissible as an aid to construction, but he found it of no real assistance. The issue was not the merits of the change, but rather the means by which it was being introduced, and the question whether those means involved the “undermining” of local authorities [wording of art. 4.4 Charter] was “too vague to be justiciable” (para. 28); see at [<http://www.bailii.org/ew/cases/EWCA/Civ/2008/148.html>]. Himsworth, *Local Government in the United Kingdom* (2012), p. 669, with reference to R (Shrewsbury and Atcham Borough Council v Secretary of State for Communities and Local Government [2007] EWHC 229 Admin (Administrative Court) and [2008] 3 All ER 548 (Court of Appeal).

235. Article 12 of the Charter allows each Party to choose the provisions by which it undertakes to “consider itself bound”. In addition, parties can make declarations that can be considered under two categories: (a) possible restrictions concerning the categories of local authorities to which the country wishes the provisions of the Charter to apply (Article 13); (b) possible restrictions concerning the territories to which the Charter is to apply (Article 16). The UK has listed some, but not all local authorities.

236. In 1998 the United Kingdom ratified the Charter unconditionally. According to a declaration it considers itself bound by all the paragraphs of Part 1 of the Charter. The reason for this unconditional ratification is the opinion that the Charter enshrined basic principles already reflected in the UK system of local democracy. However, as a dualistic legal system regarding international treaty obligations, the UK has not, by ratification of the Charter, incorporated its principles and terms into domestic law.<sup>134</sup> Nor is there any legislation directly and/or expressly incorporating it (see above).

237. The Charter’s scope is confined by the UK to certain categories of local authorities which are expressly listed.<sup>135</sup> The Charter applies to County Councils, District Councils and London Borough Councils as well as to all councils constituted under Section 2 of the Local Government (Wales) Act 1994, to all councils constituted under Section 2 of the Local Government (Scotland) Act 1994. In England, parish councils are excluded, as these are not considered fully fledged bodies of local government. As some of these bodies are different now, it would be useful to update this statement regarding to the authorities subject to the application of the Charter.

238. Local or regional bodies such as police authorities are not included due to their specialist functions and their composition of both elected and appointed members. Also with regard to these bodies, there has been considerable re-organisation: police authorities no longer exist and have been replaced by elected Police and Crime Commissioners. England and Wales do not have a national police force or a national fire and rescue service.

239. The Charter does not apply to the Assemblies of the devolved entities Scotland and Wales.

240. The application of the Charter to local authorities in Northern Ireland is not included by the declaration of 1998 as these do not appear on the list. However, an assessment of the situation in Northern Ireland was possible thanks to the cooperation of the respective UK authorities and the NILGA. According to the positive development since the Belfast Agreement and especially since 2007, the impression is that there is no reason not to include Northern Ireland. Once the current reform process is concluded in April 2015, the situation in Northern Ireland promises to be in line with the Charter principles. The rapporteurs look forward to a reassessment of the situation by the UK government in order to extend the application of the Charter by including Northern Ireland local authorities in the list of authorities to which the Charter applies.

## 5. REGIONAL DEMOCRACY

241. While the Charter neither applies to the Assemblies of the devolved entities Scotland and Wales (and Northern Ireland) nor to the Greater London Authority, the devolution process is not only decisive for the actual conditions of local government, but also for the future of the constitutional arrangements in the United Kingdom. The Rapporteurs would draw attention in this respect to the Congress Reference Framework for Regional Democracy which does not have the binding force of the Charter but which, as a body of principles on which the Congress can rely in examining regional democracy, provides “a reference point for any government wishing to begin a process of regionalisation or reform of its local and regional structures”.

- *Regional architecture*: Competences, relations with other authorities or associations, territorial integrity and protection of regional self-government

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134. Himsworth, *Local Government in the United Kingdom* (2012), p. 668.

135. Declaration contained in a letter from the Secretary of State for Foreign and Commonwealth Affairs, dated 14 April 1998, handed to the Secretary General at the time of deposit of the instrument of ratification, on 24 April 1998.

242. Corresponding to the fact that support for devolution has been strongest in Scotland, the Scotland Act (SA) 1998 confers more powers than the other devolution statutes (although these largely reflected the pre-existing administrative devolution in Scotland). Functions conferred in which the Scottish Parliament can adopt primary legislation include: education, law, courts, prisons, judicial appointments, economic development, agriculture, fisheries, local government, environment, housing, passenger and road transport, forestry and the arts (in particular education and social policies are different from those in England). The SA 1998 also contains a detailed list of the matters reserved for the UK Parliament; jurisdiction in case of controversy on the exercise of competencies has been taken over from the Judicial Committee of the Privy Council by the Supreme Court in 2009.<sup>136</sup> In addition, the “Sewel Convention”, an additional agreement, ensures that the UK Parliament would not normally legislate on matters devolved to the Scottish Parliament without the latter’s consent; however, this consent has been regularly given and the UK Parliament has never legislated on matters devolved to the Scottish Parliament without the latter’s consent.<sup>137</sup> The Scotland Act 2012 further increased powers of the Scottish Parliament.

243. By contrast, the referendum in 1998 in Wales only showed a narrow majority (50.1%) in favour of devolution and the Government of Wales Act (GWA) to be activated. This explains why initially the Welsh Assembly did not have the power to pass primary legislation. Besides secondary legislation which the Assembly could adopt, Welsh legislation had to be passed by the UK Parliament under the guidance and responsibility of the Secretary of State for Wales. Powers have been conferred regarding particular subject matters, such as: agriculture, forestry, fisheries and food, environmental and cultural matters, economic and industrial development, education and training, health, housing, local government, social services, sport and tourism, town and country planning, transport, water and flood defences, and the Welsh language. Only in 2006, under the GWA 2006, the Welsh Assembly Government has been formally recognised as a separate entity accountable to the National Assembly. The same GWA 2006 also provided for enhanced legislative powers of the National Assembly,<sup>138</sup> own law-making powers were acquired through a referendum in 2011.<sup>139</sup> Thus, the initial gap of Welsh devolution compared to Scotland and Northern Ireland has been gradually closed. On 1 November 2013 the British Prime Minister and the Welsh First Minister have announced further tax and borrowing powers for Wales; thus, devolution continues to evolve.

244. In Northern Ireland, the Northern Ireland Assembly exercises similar legislative authority over devolved matters in slightly different policy areas (further matters might be added). Also in Northern Ireland, 2006 marked a new step in devolution: after its repeated suspension between 1999 and 2007, the St. Andrews Agreement of 2006 was reached with support of the governments of the Republic of Ireland and the UK; it became the basis for the Northern Ireland (St Andrews Agreement) Act 2006 which provided for a resumption of devolution (which occurred in May 2007, after Assembly elections). The transfer of criminal justice and policing was then provided for by the Northern Ireland Act 2009 and the Hillsborough Castle Agreement 2010, followed by the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010.

- *Internal organisation:* Self-organisation and conditions of office

245. In Scotland, the single-chamber Scottish Parliament of 129 members determines its own procedures for passing legislation. The “additional member system” for its election, with two votes cast by each voter, combines features of a majority electoral system (in 73 constituencies) with a

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136. According to the Constitutional Reform Act 2005, s 40, sch 9.

137. Thus, UK legislation continues to be of importance even in certain devolved areas of competence. In the 2007-2011 session, the Scottish Parliament approved 30 such motions; Leyland, *The Constitution of the United Kingdom* (2012), p. 250 and 306.

138. The Legislative Competence Order (LCO) process has proved to be an effective way of responding to requests by the National Assembly for Wales to be given decision-making powers - legislative competence - over new areas of policy. The Government of Wales Act 2006 introduced a procedure whereby the National Assembly for Wales can bring forward proposals which would extend the Assembly’s lawmaking powers by way of Legislative Competence Orders in Council. The Order in Council mechanism allows Parliament to confer enhanced legislative powers on the Assembly in relation to specified subject matter within devolved fields. If approved by both Houses, and once it is given the royal assent in the Privy Council, direct law-making powers are devolved to the Assembly within the scope of the Order in Council. The Assembly can then make laws in the form of Assembly Measures, which need to be passed by the National Assembly but which require no further approval by either Whitehall or Parliament. [<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmwelaf/155/15509.htm>].

139. The GWA 2006 also provided for such a referendum to be supported by a two-thirds majority in the National Assembly; it was held in March 2011 with 63.5% voting in favour (although the turnout was only 35%).

proportional one (56 additional regional members elected from party lists). In the Scottish Parliament, specialist subject committees are formed for each main policy area combining scrutinising functions in passing legislation with oversight functions of select committees. Parliament nominates a Scottish First Minister who appoints ministers among Parliament members to form the government (until May 2012, the “Executive”) which is directly accountable to the Scottish Parliament.

246. The electoral system in Wales is very similar: its Welsh National Assembly, a single-chamber of 60 members, is elected through a combination of simple majority vote and proportional representation. Each voter casts two votes: one for a candidate in one of the 40 constituencies, identical to those for the UK elections, and the other one for four Assembly Members elected in five Assembly electoral regions according to the additional member system. The Welsh Assembly is also organized in subject committees which also exercise a scrutiny function. According to a Cabinet Style of Government, the National Assembly votes for a First Minister, who appoints a Cabinet which determines with its portfolios the areas of competence of the subject committees (with scrutiny functions) established correspondingly afterwards.

247. The 108 members of the Northern Ireland Assembly are currently elected every four years by single transferable vote (STV) from 18 constituencies of six members each. Provisions in the Northern Ireland (Miscellaneous Provisions) Bill, currently before Parliament, would extend the term of the Northern Ireland Assembly to five years. Characteristic for Northern Ireland is its unique system of Power Sharing at all levels in order to guarantee the participation of both communities in decision-making. An expression of these arrangements can be found in the shared office of First and Deputy First Minister.

- *Financing:* Resources, borrowing and financial equalisation

248. Devolution has a secure financial basis. In practice, no significant change has affected the method for allocation of financial resources by central government in place prior to devolution. The Barnett formula provides a ratio for applying changes in English public spending to the budgets of the devolved administrations by a calculation based on the relative populations and the extent to which the policy is devolved.<sup>140</sup> The Formula has been used for the last thirty years to determine the annual increase in allocation (the increment). Each year these increments are added on to the previous year’s allocation (the baseline) to create what is now a significant block grant of funds. The Formula accounted for almost £49 billion of public spending in 2007-08. Despite the political changes within the United Kingdom the Formula has continued to be used and has been neither reviewed nor revised. The Barnett formula applies to those policies that are devolved to the Scotland but not those policies reserved to and executed by the UK Government in Scotland: large expenditure areas, such as welfare payments, are outside the formula’s remit. Through the formula, more than half of total public expenditure in Scotland, Wales and Northern Ireland is allocated by the United Kingdom Government.

249. While there is a general obligation for the governing bodies of Scotland, Wales and Northern Ireland to meet statutory requirements in main policy areas by providing sufficient funds for these, there is wide discretion in the specific allocation of resources as is shown in the distinct policy measures in favour of students and elderly people introduced (only) in Scotland.

250. While the Barnett formula has undoubtedly guaranteed stability in the devolution process, changing wealth and demographic situation of the nations, more devolved powers and the impact of policy decisions by the devolved administrations have provoked a continuing debate around its review. Critics note that the formula is based on population and not need. It is criticized for being too schematic and simple and for not being able to establish a link of political responsibility between (local) taxation and public spending on services.<sup>141</sup> The formula also “short-changes” England’s communities by £4,1bn a year, according to the Local Government Association.<sup>142</sup>

251. The Scottish Parliament was authorised by the SA 1998 to vary the rate of income tax in Scotland by 3p in the pound. The extra revenue of £ 450 million which this varying rate could have provided is a

140. The ratio between the Nations is approximately as follows: for every 85p on English services, Scotland received 10p, Wales 5p and Northern Ireland 2.75p; Leyland, *The Constitution of the United Kingdom*, 2012, p. 260-261.

141. Leyland, *The Constitution of the United Kingdom*, 2012, p. 261.

142. As reported by the BBC website, 21st November, 2013 [<http://www.thecep.org.uk/2013/11/22/lga-admit-english-councils-short-changed-by-uk-funding-formula/>].

small amount compared to the £ 14 billion block grant transferred from London already in 1998.<sup>143</sup> Thus, these limited tax-varying powers have never been used despite the political attention and debate on the issue. There was no political incentive to do so, as Scotland's budget, calculated under the Barnett formula, increased significantly in the first years of devolution until the current amount of ca. £ 25 billion. The Scotland Act 2012 abolished the above limited tax-raising powers providing for a new Scottish rate of income tax and the ability to borrow money as well as – with the consent of the UK Parliament – the ability to create new local taxes (e.g. land fill tax and tax on property transactions).<sup>144</sup>

252. For Wales, the British Prime Minister and the Welsh First Minister have announced independent tax-raising powers as part of a package for further enhancing Welsh devolution on a meeting on 1 November 2013.

253. Until today, a major problem is the rather small tax base. Wales is uniformly poor by any standards and has become poorer despite devolution and its favourable geographical situation not far from the booming London area. The current block grant for Wales amounts to £ 14,6 billion per year (plus funding for non-devolved matters).

254. Northern Ireland does not have independent tax-raising powers, but it does have powers to change regional rates.

- Relations with other sub-national territorial authorities and intergovernmental relations

255. Devolution is mainly a bilateral process between the central government and the devolved territory. There is not much horizontal co-ordination or co-operation.

256. The intergovernmental relations between the central government and the devolved administrations are governed by a Memorandum of Understanding and Concordats in policy fields. At least up to 2007 relations have been predominantly informal. General principles and common working arrangements are laid down in a Memorandum of Understanding which has been repeatedly revised (latest version June 2011).<sup>145</sup> Practical guidelines and arrangements for interaction are indicated in various "Concordats" (working documents which are not legally binding, but "binding in honour only").<sup>146</sup>

257. The Secretaries of State for Scotland, Wales and Northern Ireland are members of the UK Cabinet responsible for liaising with the devolved administrations. The Secretary of State for Wales also deals with Welsh legislation which needs to be passed in the UK Parliament (less now, due to transfer of new primary legislative powers). The Secretary of State for Northern Ireland retains some responsibilities, including for issues which have not yet been devolved and where the Northern Ireland Assembly can legislate with UK Government consent.

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143. It should be noted that the Scottish Government has even less revenue raising power than its local authorities (which do have fiscal powers used to raise around 15% of their own finances alongside grant funding calculated by an agreed needs based formula): the Scottish Parliament is responsible for just 7% of taxes raised in Scotland, as - according to the 1998 Scotland Act – all taxes except local taxes are reserved to the UK Parliament. Almost the entire Scottish Departmental Expenditure Limit is funded by block grant from the UK Government over which the Scottish Government has no control. However, this is likely to change after the referendum.

144. According to the Recommendations of the Calman Commission, set up by the Scottish Parliament and the UK government in 2007, included in the SA 2012, the rates of the UK income tax will be reduced by 10p in the pound for Scotland leaving it up to the Scottish Parliament to decide whether to choose a higher or lower rate or to exactly restore the overall rate (by choosing a Scottish rate of 10%). However, in an attempt to link spending levels to revenue raising in order to establish political responsibility, the block grant allocation from London would be reduced in case of an increase in Scottish spending with the difference to be covered by raising the Scottish rate of income tax. See Leyland, *The Constitution of the United Kingdom, 2012*, p. 261-262.

145. Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee, June 2011 [[http://www.cabinetoffice.gov.uk/sites/default/files/resources/devolution-memorandum-of-understanding\\_0.pdf](http://www.cabinetoffice.gov.uk/sites/default/files/resources/devolution-memorandum-of-understanding_0.pdf)]. For a summary see the Quick Guide to The Joint Ministerial Council, National Assembly for Wales, Research Service, January 2012 [<http://www.assemblywales.org/qg12-0002.pdf>]; see Cabinet Office, *Devolution Guidance Notes* [<http://www.cabinetoffice.gov.uk/resource-library/devolution-guidance-notes>], publication date 23/8/2011.

146. In 2011, there were three overarching concordats (the coordination of EU policy and implementation; financial assistance to industry; and international relations touching on the responsibilities of the devolved administrations) as well as numerous bilateral concordats concerning specific areas or interaction.

258. Information, consultation, and coordination between the central Government and the devolved administrations is managed by the Joint Ministerial Committee (JMC) bringing together UK Ministers and Ministers of the devolved administrations.<sup>147</sup>

- External relations, in particular EU affairs and relations with EU

259. Scotland, Wales and Northern Ireland provide autonomously for the implementation and enforcement of EU law in devolved matters, but UK policy in the EU is a reserved matter. In case of inertia or non-compliance due to the responsibility of a devolved entity, financial penalties will apply. Under the Localism Act 2011, this principle also applies to local authorities. Thus, cooperation and co-ordination with the central government as the ultimately responsible vis-à-vis Brussels is key; a Concordat on Co-ordination of European Union Policy Issues contains details and procedures. Where EU issues cannot be covered bilaterally between departments, they should be considered by the Joint Ministerial Committee (Europe).

260. Participation in EU Council meetings is decided on a case-by-case basis by the lead UK Minister. Attendance by officials at EU meetings is decided bilaterally with the lead UK Department.

261. However, there are no established and structured channels for local government to inform the UK negotiating position on proposals for EU legislation regarding subsidiarity or issues specifically affecting municipalities. At most, municipalities are treated like any other stakeholder. There has been some minor progress thanks to the Policy Statement on the Localism Act,<sup>148</sup> but no such arrangement exists in Scotland for cooperation and coordination with local government when EU issues directly concern them.

262. The two Houses of the UK Parliament have established parallel procedures for the EU subsidiarity Early Warning System and work independently. The three devolved assemblies liaise closely on subsidiarity monitoring. Their position in their subsidiarity analysis will be taken into account as part of the usual process for considering documents carried out by the EU Committee/the European Scrutiny Committee; in case of differing points of view between the central and the devolved levels, the UK Parliament will have the final say.

263. UK members of the Committee of the Regions (24 full members) are elected politicians representing local authorities, the devolved bodies of Scotland, Wales, Northern Ireland as well as the Greater London Authority.

264. The devolved administrations have EU Offices in Brussels.<sup>149</sup> In addition, the four national associations of local authorities (WLGA, NILGA, COSLA, LGA) have Brussels Offices to represent local interests in the European Union and support their CoR members, as does the Greater London Authority.

265. As for Northern Ireland, according to the arrangements which were set up by the Good Friday Agreement, the North-South Council gathers members of the executives from Northern Ireland and the Republic of Ireland for cooperation on issues of common interest, while the British-Irish Council provides a forum for including broader interests with the United Kingdom.

- *England's special "functional region"*: The Greater London Authority (GLA)

266. The Greater London Authority (GLA), the office of the Mayor of London, and the London Assembly were established by the Greater London Authority Act 1999. The specific functions, duties and powers are set out in the GLA Act 1999, the Greater London Act 2007, the Localism Act 2011 and other pieces of legislation. The governance model of the GLA, implemented in 2001, is split between

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147. CoR, Study on the Division of Powers ... (2012), p. 966.

148. DCLG, 2012 "Policy statement for Part 2 of the Localism Act 2011.

149. The EU Offices of Wales and Northern Ireland are part of the organisational structure of the UK Permanent Representation. It is part of the consequences related to the "English question" that England does not have a separate EU representation office in Brussels.

the office of the directly elected Mayor of London and the 25-member London Assembly which scrutinises the work of the Mayor, i.e. examine policies, decisions and activities.<sup>150</sup>

267. The Mayor sets the overall vision for London and has a duty to create plans (including the overarching London Plan) and policies for the capital in the areas of: transport; planning and development; housing; economic development and regeneration; culture; health inequalities; and environmental issues. The Mayor sets the budget for the core GLA and the functional bodies (the Mayor's Office for Policing and Crime, London Fire and Emergency Planning Authority and Transport for London), as well as appointing members to these bodies. The Mayor also appoints a Statutory Deputy Mayor from among the 25 members of the London Assembly.<sup>151</sup>

268. The Mayor is directly elected for four-year terms by voters across Greater London. The first two Mayors are very high profile characters: Ken Livingstone (first eight years) and Boris Johnson (since 2008). The 25-member London Assembly is elected together with the mayor for a four year term under the Additional Member System. 14 members represent geographical constituencies based on pairings of London Boroughs while a further 11 are elected from a London-wide list.<sup>152</sup>

269. Salaries for the Mayor and Assembly Members can be found on the website.<sup>153</sup> The GLA has the authority to recruit its own staff.

270. Funding for the GLA and its functional bodies comes from a combination of sources: the resource grant from central Government and further funding through the business rate retention scheme and through the council tax precept. Transport for London (TfL) will also accrue revenue through fares. The London Settlement up until 2014/15 includes a capital grant of £2,6bn specifically to fund the housing and regeneration programmes, the closure of the London Development Agency and the development of the Queen Elizabeth Olympic Park by the LLDC.<sup>154</sup>

271. With 23% of the GDP created in London, it is the important economic driver for the UK and a net contributor to the UK budget reflecting its economic strength and tax base. As an example, the most significant single element of local government funding is business rates, and just one London Borough, Westminster, generates more business rates income for central government than the next five largest English city councils combined. Within London, tax revenues are predominantly generated in central London but the majority of spending occurring in outer London residential areas. Council tax funds only a relatively small proportion of expenditure: less than 7% of the Mayor of London's budget. Funding per head remains higher in London due to cost factors and other issues when compared to the England average, although it varies across the Capital. In 2012 the Mayor of London established an independent finance commission, the London Finance Commission, which recommended that London government (the GLA and the London boroughs) should have greater fiscal autonomy and thus be less dependent on central government grant. According to the information provided by GLA the aim is not to generate more revenue, but garner more capital for investments, in particular in infrastructure to meet the needs of the growing London population.

272. As a strategic body the GLA works closely with London Boroughs and their representative body, London Councils, to achieve the objectives for London's development set out in the London Plan. Under the terms of the Duty to Cooperate set out in the Localism Act 2011 the Mayor (and TfL) are required to co-operate with planning authorities inside and outside London in the preparation of their local plans (and they are required to co-operate with the Mayor). London Boroughs and local planning authorities outside London are also required to co-operate where appropriate.

273. The GLA is currently the only directly elected "regional" body in functional terms with power and resources devolved from the centre to the GLA. Its structure is unique. In May 2013 the London Finance Commission, set up by the Mayor of London, called for further devolution. However the

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150. The system of election is the Supplementary Vote, where each voter expresses a first and second preference and if no candidate has 50 per cent or more first preferences then the second preferences of all candidates are reallocated to the two highest ranked candidates to determine the winner.

151. The Mayor of London should not be confused with the ancient office of the Lord Mayor of the City of London Corporation.

152. Stevens, Andrew, History and many post-war reforms shape local government in UK (10 April 2012), at [[http://www.citymayors.com/government/uk\\_government.html](http://www.citymayors.com/government/uk_government.html)]

153. GLA's website: [<http://www.london.gov.uk/mayor-assembly>].

154. Further details can be found in the GLA's statements of accounts [<http://www.london.gov.uk/mayor-assembly/gla/spending-money-wisely/accounts-and-annual-governance-statement>].

current government has stressed that it has no plans to transfer further powers to the GLA,<sup>155</sup> nor does it see the GLA as a model to be replicated in other city regions, being its situation simply too specific.

- *The Evolution of Devolution: from open process to written Constitution?*

274. Devolution has created a competitive environment allowing for creative and innovative proposals which, in case of successful implementation, might become a model for other parts of the UK after a successful experiment in one part of it (e.g. organ donation based upon presumed consent has been introduced in Wales, but not yet elsewhere in the UK).

275. Today, devolution is a working and developing system, but its main strength – gradual, pragmatic implementation – is also a weakness at the same time, as the system lacks an overall long-term rationale and consequent constitutional design. The open devolution process bears great risks for the UK system which is evident with regard to the Scottish independence referendum in 2014. But even if voters should decide against independence, the English position will become more difficult as the current government will have to honour its promise to devolve further powers to Scotland and Wales. Further devolution will make it inevitable to touch the explosive issue of financial relations and the need to review the Barnett formula for the future. Calls for a written Constitution to rationalise the parts in relation to the whole are based upon these considerations.

## 6. CONCLUSIONS AND FURTHER STEPS OF THE MONITORING PROCEDURE

276. The rapporteurs would like to underline that they are aware that although their recommendations will be addressed to the United Kingdom as Member State of the Council of Europe, the implementation thereof will be subject to the powers and responsibilities of the UK Government as well as to those of the governments of Scotland, Wales and Northern Ireland according to the distribution of competences regarding local government.

277. From the analysis of the information, data and personal views gathered during the visits, and the analysis of the implementation of the Charter, the Rapporteurs conclude that the United Kingdom is in general compliance with the obligations taken under the Charter. It is important to note that an independent and detailed assessment, commissioned by the Local Government Association (LGA) in 2013<sup>156</sup> concludes its evaluation in relation to England with a moderately positive result of general compliance. It is also the self-assessment by the UK Government: “The current approach to, and structure of, local government in England is compliant with the European Charter of Local Self-Government.”<sup>157</sup> However, a number of issues are identified as well as areas in which ambiguity remains or where only the letter, but not the spirit of the Charter is respected.<sup>158</sup>

278. In the rapporteurs’ opinion, when compared to the recommendations of 1998, the situation has improved, notably through the devolution process. In fact, in a number of areas, the situation seems more critical for local authorities in England than in the devolved entities. This is particularly true for the greatest of all challenges, i.e. the significant reduction of financial resources (currently, above all in England, but in future probably also in Scotland and Wales).

279. The rapporteurs would suggest that the most significant areas that require attention are the following:

- a) Recognition and entrenchment of (the right to) local self-government remains an important and unresolved issue. Article 2 of the Charter clearly requires more than compliance with its spirit. Already in the first Recommendation 1998, the rapporteurs recommended “to establish a legal framework giving local government a clear basis and a general competence”. This is just one element and falls short of completely satisfying the whole requirement regarding recognition of local self-government.

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155. Given the recent devolutions of responsibilities and funding through the Localism Act in 2011 and the decentralised local government finance through the Local Government Finance Act 2012.

156. Jeremy Smith, *Local Government in England: do we comply with the European Charter of Local Self-Government?* (May 2013).

157. *The Cabinet Manual*, 1st edition, October 2011, sub 8.27 (p. 67).

158. Document: UK secretariat briefing: 25th session of Congress, 28-31 October 2013, p. 13. See the “Conclusions as regards compliance” section at the end of each Article in the Article-by-Article review.

The Localism Act 2011 for England and Wales has made an important step into this direction (affirming a general power), but falls short of completely satisfying the whole requirement. Anchoring the guarantee of local self-government in (constitutional) law is admittedly difficult in the current legislative framework of the UK, but various proposals already exist and these should be seriously examined. The proposed codification of local government legislation in England might become an additional element of giving local government a clear framework as well as one of the possible ways for incorporating the Charter principles into domestic legislation in order to make them also binding for Courts (see already Recommendation 1998). In Scotland constitutional protection or legislative protection via a new Scotland act depends on the outcome of the forthcoming referendum.

b) The emphasis on local authorities as service providers often leads to the perception of local government as merely one among many service providers at local level, although local authorities manage a considerable share of public affairs and services and represent the local community in important issues beyond that, such as planning and licensing. Attempts and experiments to give elected representatives of local government leadership and coordinating functions also vis-à-vis other service providers within their local area should be continued and strengthened.

c) The rapporteurs consider that oversight through extensive reporting duties and active involvement in local affairs by various Ministries of the central government poses considerable limits on local authorities' discretion to manage local affairs. This reality seems to be in contrast with the intentions of the government as expressed by the new general power in the Localism Act 2011 in England. The Single Data List for local government, first published in 2011 by the DCLG, appears to have placed a limit on data collections from local government.

d) The Cabinet and the Committee systems currently in use function through elected councillors. Their work can rarely be considered as a part-time or evening job. As already stated in the Recommendations 1998, their status should better correspond to their dedication and responsibility and to attract a diverse pool of talent.<sup>159</sup> The low turnouts at local elections should be considered a call for strengthening the democratically elected institutions as well as the role of elected office holders who are the backbone of the local government system.

e) As regards relations with local authorities and consultation, it appears that consultation takes place to a reasonable extent and obviously does not (and cannot) mean co-decision. However, the Rapporteurs believe that the partnership approach and the co-operation experiences in Scotland, Wales and Northern Ireland might also be considered for the relations between central government and English local authorities. In particular, the model of the Partnership Panel in Wales could provide an institutionalised framework for the dialogue between levels of government.

f) As regards the financial situation, the rapporteurs recall that, already the first monitoring report of 1998, it was recommended to "seriously increase local government's financial capacities". Since then, the situation has worsened, although it cannot be overlooked that local authorities all over Europe have to face difficult financial situations in times of global financial crisis and austerity policies. Concerns relate above all to the low level of local government's own resources. There are either no (autonomous) taxing powers at local level or these are (politically) limited, due to the council tax referendum threshold (England), which has substituted the capping rate system since 2011, and the freeze of council tax – agreed each year since 2008 with COSLA (Scotland). All rates are decided by central government for England, by the Scottish government for Scotland. Also funding is still absolutely dominated by grants from the respective governments.<sup>160</sup> Thus, currently only charges are to be under full local responsibility. Especially under these difficult financial conditions, it is all the more important to safeguard local financial autonomy. In the rapporteurs' opinion, in order to limit the dependence from central or devolved governments and to strengthen local financial responsibility, a diversified base of local revenue appears an urgent necessity. The finance system of local government in England was fundamentally reformed in April 2013 now allowing local government to keep part of business rates. Central government has also set up programmes and funds to transform local services, including those provided by local authorities. The positive way in which councils have dealt with the localisation of resources has also to be recognised. However, it is too early to assess the impact of these reform measures in practice.

159. In its answer to the PCRC, Government has made it clear that it considers "the role of councillors one essentially of volunteering. It is quite wrong to equate status with pay: status comes from respect for the service given to one's community".

160. As illustrated above, however, also the Scottish Government depends nearly totally on Central Government grants.

- g) The central problem in England – despite a general praise of “localism” – might currently still be characterised as “powers without money”. Considerable powers are “given” by central government which nevertheless retains influence and control over a large part of local government finances (although there are some recent policies for reducing top-down inspection and assessments of the performance of local authorities). Taken together with the enormous financial constraints on local authorities as a consequence from cuts and indebtedness, these limitations risk to curb local government’s freedom of action and decision-making considerably. Despite significant cuts, in Wales and Scotland local authorities are still better off financially than their English counterparts, but their autonomy suffers from constraints on local powers exercised by the devolved Assemblies which have seen an increase of their own powers.
- h) Compared to the situation in 1998, regional government in Northern Ireland seems stable, consolidated and its functioning generally in line with the principles of the Charter. Local government in Northern Ireland has existed continuously and in the same form since 1972. However, a major re-organisation of local government in Northern Ireland is under way and will only be completed in April 2015. The Rapporteurs were informed during the visit that the issue of the application of the Charter in Northern Ireland could be considered once the reform has been carried out, and they look forward to this development. It might (still) be possible to link this to the Bill on Local Government likely to be adopted by March/April 2014. A post-monitoring mission of the Congress to Northern Ireland for assessing the implementation of the reform in 2015 might be considered, too.
- i) The rapporteurs would also suggest that it might be judicious to examine, in the near future, the need to update the UK’s declaration as this refers (in part) to authorities which do not exist anymore and do not include the Greater London Authority and Northern Ireland. They invite the UK government to consider the ratification of other instruments related to the Charter: the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144; only signed so far); the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207), the Additional Protocol to the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities (ETS No. 159).
- j) The debate on a re-definition of the distribution of powers and of the relations between central and local government in the United Kingdom continues, as demonstrated among other contributions by various and recent reports of Parliamentary committees.<sup>161</sup> The rapporteurs would suggest that the principles of local self-government enshrined in the Charter might be of inspiration and guidance in the unfinished process of re-structuring territorial government in the United Kingdom.

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161. In Scotland, the Island Areas Ministerial Working Group is exploring opportunities to extend local autonomy in the context of the referendum to those Local Authorities whose territory is exclusively islands.

**Appendix - Programme of the Congress monitoring visits in the United Kingdom**

**Congress monitoring visit to the United Kingdom  
Part I, 29 – 31 May 2013  
London, Leeds and Edinburgh**

**Programme****Congress delegation**Rapporteurs:

Mrs Angelika KORDFELDER	Rapporteur on local democracy Member of the Monitoring Committee of the Congress Chamber of Local Authorities, L, SOC <sup>162</sup> Mayor of Rheine (Germany)
Mr Alexander USS	Rapporteur on regional democracy Member of the Monitoring Committee of the Congress Chamber of Regions, R, EPP/CCE <sup>163</sup> Chairman, Krasnoyarsk Regional Legislative Assembly (Russian Federation)

Expert:

Mr Jens WOELK	Consultant (Germany) Member of the Group of Independent Experts on the European Charter of Local Self-Government of the Congress. Associate Professor in Comparative Constitutional Law at the Law Faculty of the University of Trento (Italy) Dept. of Legal Sciences
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Secretariat:

Mr Jean-Philippe BOZOULS	Head of the Department of Statutory Activities Executive Secretary of the Chamber of Local Authorities
Ms Sedef CANKOÇAK	Co- Secretary of the Monitoring Committee of the Congress

**Wednesday, 29 May 2013 - London**
**Members of the United Kingdom Delegation to the Congress**

Councillor John WARMISHAM, Head of Delegation, Salford City Council  
Councillor Sandra BARNES MBE, South Northamptonshire District Council  
Councillor Nigel MERMAGEN, South Somerset District Council

**Local Government Association (LGA)**

Councillor Sir Merrick COCKELL, Chairman  
Ms Carolyn DOWNS, LGA Chief Executive

**Leaders of political groups in the LGA**

Councillor Andrew LEVER, Conservative Group  
Councillor David SPARKS, Labour Group Leader  
Councillor Richard KEMP, Liberal Democrat Group  
Councillor Marianne OVERTON, Independent Group Leader

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162. SOC : Socialist Group

163. EPP/CCE : Group European People's Party

**Mr Keith WHITMORE**, former President of the Congress of Local and Regional Authorities

**Greater London Authority**

Sir Edward LISTER, Mayor's Chief of Staff and Deputy Mayor of Policy and Planning  
Andrew BOFF AM, Member of the London Assembly and Congress member  
Mr Tom MIDDLETON, Head of Governance  
Ms Sarah GIBSON, Head of Government Relations  
Mr Simon REES, Senior International Relations Officer

**Mayor and Members of the Council of the London Borough of Hackney**

Councillor Jules PIPE, Mayor of Council and Chair of London Councils

**Thursday, 30 May 2013 – London, Leeds**

**Westminster City Council**

Mr Giles ROCA, Head of Strategy  
Mr Majeed NEKY, Policy Officer

**Leeds City Council**

Councillor Richard LEWIS, Deputy Leader of Leeds City Council (Labour Party)  
Councillor Tracey SIMPSON-LAING, Deputy Leader of York City Council (Labour Party) and Congress member  
Councillor Tom LEADLEY, Morley Town Council, Morley Borough (Independent)  
Councillor Carl LES, Deputy Leader of North Yorkshire County Council (Conservative Party)

**Friday, 31 May 2013 – Edinburgh, Scotland**

**Minister for Local Government and Planning of Scotland**

Mr Derek MACKAY, Minister

**Scottish Parliament**

Mr Kevin STEWART MSP, Chair of the Local Government and Regeneration Committee  
Ms Christina McKELVIE MSP, Chair of the European and External Relations Committee and Congress member  
Ms Helen EADIE, Member of the Scottish Parliament and Congress member

**Leaders of the Scottish Councils**

Open Discussion with Congress Delegation

**Convention of Scottish Local Authorities (COSLA)**

Councillor David O'NEILL, President  
Councillor Michael COOK, Vice-President  
Councillor Harry McGUIGAN, Community Wellbeing Spokesperson and Congress Member  
Councillor Drew HENDRY, Leader Highland Council  
Councillor Gary ROBINSON, Leader Shetland Council  
Mr Rory MAIR, Chief Executive  
Ms Barbara LINDSAY, Deputy Chief Executive  
Mr James FOWLIE, Director – Integration and Development

**Meeting with a Member of the Group of Independent Experts**

Professor Chris HIMSWORTH, Member of the Group of Independent Experts, University of Edinburgh Law School

**Congress monitoring visit to the United Kingdom  
Part 2, from 5 to 7 November 2013  
London and Cardiff**

**Programme**

**Congress delegation**

Rapporteurs:

Mrs Angelika KORDFELDER	Rapporteur on local democracy Member of the Monitoring Committee of the Congress Chamber of Local Authorities, L, SOC <sup>164</sup> Mayor of Rheine (Germany)
Mr Alexander USS	Rapporteur on regional democracy Member of the Monitoring Committee of the Congress Chamber of Regions, R, EPP/CCE <sup>165</sup> Chairman, Krasnoyarsk Regional Legislative Assembly (Russian Federation)

Secretariat:

Mr Jean-Philippe BOZOULS	Head of the Department of Statutory Activities Executive Secretary of the Chamber of Local Authorities
Ms Sedef CANKOÇAK	Co- Secretary of the Monitoring Committee of the Congress

Expert:

Mr Jens WOELK	Consultant Member of the Group of Independent Experts on the European Charter of Local Self-Government of the Congress. Associate Professor in Comparative Constitutional Law at the Law Faculty of the University of Trento (Italy) Dept. of Legal Sciences
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**Tuesday, 5 November 2013 - London**

**Department for Communities and Local Government**

Baroness Tina STOWELL, Parliamentary Under-Secretary  
Mr Paul ROWSELL, Deputy Director for Local Democracy

**Department for Communities and Local Government**

Mr Paul ROWSELL, Deputy Director for Local Democracy  
Ms Hannah BROOK, Department of Communities and Local Government

**Scotland Office**

Mr Chris FLATT, Deputy Director for Constitutional Policy  
Ms Sheila SCOBIE, Head of Social Policy

**Department for Communities and Local Government - Finance**

Mr Simon RIDLEY, Director for Local Government Finance  
Ms Miranda ABREY, Department of Local Government Finance

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164. SOC : Socialist Group

165. EPP/CCE : Group European People's Party

**High Court of Justice of England and Wales**

Sir Brian LEVESON PC, President of the Queen's Bench Division  
Justice Duncan OUSELEY, Lead judge of the Administrative Court

**Department for Communities and Local Government**

Ms Helen EDWARDS, Director General for Localism and Deputy Permanent Secretary  
Mr Paul ROWSELL, Deputy Director for Local Democracy

**Wednesday, 6 November 2013 - London**

**Joint Meeting with Members of Parliament**

**House of Common**

Mr Clive BETTS, MP, Chair of the Communities and Local Government Committee  
Mr Paul FLYNN, MP, Member of the Political and Constitutional Reform Select Committee

**House of Lords**

Lord BEST, President of the LGA  
Lord BEECHAM, Vice-President of the LGA, Former Chairman of the LGA  
Baroness EATON, Member, Former Chairman of the LGA  
Lord TOPE, Liberal Democrat Spokesperson on local government matters

**Northern Ireland Local Government Association**

Councillor Arnold HATCH, NILGA President  
Mr Ken BISHOP, Head of Programmes Investment and Partnerships  
Mr Rupert CROWLEY, NILGA Intern

**Wales Office**

Mr Geth WILLIAMS, Deputy Director for Constitution and Strategy

**Northern Ireland Office (tele-conference from Belfast)**

Mr Alan WHYSALL, Deputy Director for Constitutional and Political Group  
Ms Karen McNEILL, Senior Elections Policy Officer

**The Local Government Ombudsman**

Ms Jane MARTIN  
Mr Rhys BEVAN, Legal Advisor  
Ms Anne WHITEHORN, Legal Advisor

**Thursday, 7 November 2013 - Cardiff**

**Cardiff Council**

Councillor Heather JOYCE, Leader of Cardiff Council  
Mr Mike DAVIES, Head of Performance and Improvement  
Mr Adam FOSTER, Principal Strategy Officer

**National Assembly for Wales, Communities, Equality and Local Government Committee**

Ms Christine CHAPMAN AM, Committee Chair  
Mr Rhodri Glyn THOMAS AM, Committee Member  
Mr Mike HEDGES AM, Committee Member

**Welsh Local Government Association (WLGA)**

Councillor Ronnie HUGHES, Congress member and WLGA Deputy Spokesperson on European Affairs  
Mr Iwan WILLIAMS, European Affairs Manager  
Ms Lowri GWILYM, Europe and Regeneration Team Manager  
Mr Steve THOMAS, Chief Executive