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Local democracy in Ireland

Monitoring Committee

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Summary

This is the second report concerning the monitoring of local democracy in Ireland since 2001. It expresses satisfaction that Ireland has made important changes since then, and stresses the commitment of the Irish authorities to move from an almost fully centralised system to a certain level of decentralisation, through an ambitious Action Programme adopted in October 2012. The report notes, however, that the constitutional protection of local self-government is rather weak, local governments can still not be said to manage a substantial share of public affairs, the administrative supervision of their activities by the central level remains high and consultations with local authorities and their associations are not systematic or sufficiently regulated. The report also draws attention to the very limited powers of local authorities to levy taxes or to set rates within the limits of the law.

It is recommended to the Irish authorities that they revise their legislation in order to ensure that the subsidiarity principle is better enshrined and protected in the law, implement the Action Programme rapidly with a view to devolve more powers and financial autonomy to local governments and improve the financial equalisation procedure. The authorities are equally encouraged to continue in the existing regional development efforts. The Government is invited to develop the procedures and mechanisms of consultation with local and regional authorities on matters concerning them directly, so as to entrench these procedures in the domestic legislation and in practice. Finally, the recommendation calls on the Irish authorities to sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

¹ The co-rapporteur Mr Michael Cohen is no longer a member of the Congress since September 2013. A new co-rapporteur has been appointed by the Chair of the Monitoring Committee in accordance with Resolution 307 (2010) REV.

² L: Chamber of Local Authorities / R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress
SOC: Socialist Group
ILDG: Independent Liberal and Democratic Group
ECR: European Conservatives and Reformists Group
NR: Not registered

Local democracy in Ireland

RECOMMENDATION 342 (2013)³

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

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

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

c. Resolution 307 (2010) REV2 on Procedures for monitoring the obligations and commitments entered into by the Council of Europe member states in respect of their ratification of the European Charter of Local Self-Government (ETS No.122);

d. Recommendation 219 (2007) on the status of capital cities, Recommendation 132 (2003) on municipal property in the light of the principles of the European Charter of Local Self-Government;

e. Resolution 299 (2010) of the Congress on Follow-up by the Congress of the Council of Europe Conference of Ministers responsible for Local and Regional Government (Utrecht, Netherlands, 16-17 November 2009), which states that the Congress will use the Council of Europe Reference Framework for Regional Democracy in its monitoring activities, as well as the reply made by the Committee of Ministers to the Congress Recommendation 282 (2010) (CM/CONG(2011)Rec282final, encouraging the governments of member states to take account of the above mentioned Reference Framework;

f. the previous Recommendation 97 (2001) on local and regional democracy in Ireland;

g. the explanatory memorandum [CPL(25)5FINAL] on the situation of local democracy in Ireland, presented by Mr Andris Jaunsleinis, Latvia (L, ILDG)⁴ and Mrs Merita Jegeni Yildiz, Turkey (R, EPP/CCE).

2. The Congress recalls that:

a. Ireland signed the European Charter of Local Self-Government (ETS No.122, hereafter referred to as “the Charter”) on 7 November 1997 and ratified it on 14 May 2002 with a declaration to the effect that Ireland intends to confine the scope of the Charter to the following categories of authorities: county councils, city councils and town councils;

b. Ireland has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207):

3. The Congress delegation carried out two official visits to Ireland from 3 to 5 October 2012 and on 3 May 2013.⁵

³ Debated and approved by the Chamber of Local Authorities on 30 October 2013, and adopted by the Congress on 31 October 2013, 3rd sitting (see Document [CPL\(25\)5FINAL](#), explanatory memorandum, presented by Andris Jaunsleinis, Latvia (L, ILDG) and Merita Jegeni Yildiz, Turkey (R, EPP/CCE), rapporteurs).

⁴ The co-rapporteur Mr Michael Cohen is no longer a member of the Congress since September 2013. A new co-rapporteur has been appointed by the Chair of the Monitoring Committee in accordance with Resolution 307 (2010) REV.

⁵ In their work, the rapporteurs were assisted by Professor Juraj Nemeč, consultant, who is a member of the Group of Independent Experts on the European Charter of Local Self-Government, and by Sedef Cankoçak, Co-Secretary of the Monitoring Committee of the Congress.

4. The delegation would like to thank the Permanent Representation of Ireland to the Council of Europe and the Irish authorities at central, regional and local levels, the associations of local and regional authorities, experts and other interlocutors for their valuable co-operation at different stages of the monitoring procedure and for the information conveyed to the delegation.

5. The Congress:

a. notes with satisfaction that important changes have been accomplished since the last recommendation and that the basic legal framework is now established for local and partly also for regional authorities;

b. takes note that the local authorities in Ireland, in spite of various structural and financial issues, have a strong connection to their citizens and deliver services adequately;

c. acknowledges the commitment of the Irish authorities to move from a very centralised system to a certain level of decentralisation;

d. welcomes the Action Programme adopted in October 2012 by the Irish Government, which provides a clear commitment on the part of the Government to expand the local government's responsibilities.

6. The Congress expresses its concern that:

a. the constitutional protection of local self-government is rather weak and that the principle of subsidiarity is not properly reflected and guaranteed in the legislation;

b. local governments do not manage a substantial share of public affairs: local authorities are still waiting for a strong decentralisation effort and the delegation of relevant competences and financial independence to the local and regional level;

c. consultations with local authorities and their associations are neither systematic nor sufficiently regulated to allow the latter to be involved in the decision-making process on matters which concern them and, in the present context, to make an input into the proposed reform;

d. the administrative supervision of local authorities' activities by the central level remains disproportionate and, under this system, the powers given to local authorities are not full and exclusive;

e. the equalisation mechanism is not transparent and, although local governments have the formal freedom to adopt budgets, such freedom is severely limited in practice;

f. the scale of local taxes and the power of local authorities to determine the rates are very limited;

g. conditions of office of local elected representatives are insufficiently regulated by general legislation (Labour Code).

7. In the light of the above, the Congress requests that the Committee of Ministers invite the Irish authorities to take account of the following recommendations:

a. to revise their legislation in order to ensure that the subsidiarity principle is better enshrined and protected in the law and to promote this basic principle in practice in the Irish public administration system;

b. to implement the Action Programme rapidly in order to devolve more powers and responsibilities to local and regional authorities and delegate relevant competences and financial resources to the local and regional levels;

c. to develop the procedures and mechanisms of consultation with local and regional authorities on matters concerning them directly both in legislation and in practice, taking into account the criteria provided by Article 4 para.6 of the Charter, namely, "in due time" and "in an appropriate way";

d. take the necessary measures to amend existing legislation which allows the central government to intervene in local decision making and ensure that the Action Programme does not increase the level of supervision even more through the establishment of a new additional National Oversight Office to monitor the efficiency of local authorities including, *inter alia*, their compliance with national objectives and policies;

e. to review the equalisation mechanism in order to render it transparent and ensure that the rules pertaining thereto are established in consultation with the local authorities;

f. to ensure that, in practice, local governments have the power to levy taxes and determine effectively the rates within the limits of the law;

g. to consider establishing a clear and specific legislative basis regarding the conditions of office of local elected representatives, particularly as related to rules for private employers to provide “free time” to elected officials for participation in local matters;

h. to encourage the Irish Government to consider opening the debate on further developing the regional tier of government, with the possibility of putting in place a system of direct election of representatives and real responsibilities in the delivery of “regional” public services;

i. to invite the Irish Government to sign the Additional Protocol to the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities (ETS No. 159) and 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).

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EXPLANATORY MEMORANDUM

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

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

2. Ireland 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 7 November 1997 and ratified it on 14 May 2002, with a declaration to the effect that Ireland intends to confine the scope of the Charter to the following categories of authorities: county councils, city councils and town councils.

3. Ireland has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207), the Additional Protocol to the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities (ETS No. 159), or the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144).

4. A first monitoring visit was carried out in Ireland in two parts, in January and March 2001 respectively, resulting in Recommendation 97 (2001)1 on local democracy in Ireland.

5. The present report relates to the visits of the Congress to Ireland from 3 to 5 October 2012 and on 3 May 2013, to monitor the situation of local and regional democracy in this country on the basis of the Charter. The Monitoring Committee appointed Michael Cohen (Malta, L, SOC) and Merita Jegeni Yıldız (Turkey, R, EPP/CCE) as co-rapporteurs on local and regional democracy, respectively. They were assisted by Professor Juraj Nemec, consultant, member of the Group of Independent Experts on the European Charter of Local Self-Government and the Secretariat of the Congress.

6. The Congress delegation met with national authorities including the Minister for the Department of Environment, Community and Local Government (DECLG), members of the Parliamentary Joint Committee on Environment, Culture and the *Gaeltacht*, the Joint Committee on Finance, Public Expenditure and Reform and the Joint Committee on Investigations, Oversight and Petitions, the Ministry for Public Expenditure and Reform, the Office of the Ombudsman, the Chief Justice of the Supreme Court of Ireland and the Local Government Audit Services. There were also meetings with the associations of local authorities including the Association of County and City Councils of Ireland, the Association of Municipal Authorities of Ireland, the Association of Irish Regions, the Local Authority Members Association and the County and City Managers' Association/Local Government Management Agency. The rapporteurs also met with the mayors, managers and councillors of Dublin, Cork, County Cork, County Meath and Trim as well as with specialists on issues of local government. The detailed programmes are appended to the present report.

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

2. POLITICAL CONTEXT

2.1. *International situation and relations with neighbouring countries*

8. The Republic of Ireland ("Ireland" in the following text), which became independent from the United Kingdom ("UK") in 1922, is counted today among Europe's stable democracies. It is a member of the Council of Europe (since 1949), the OSCE (since 1973) and of the European Union (since 1973). It is not a member of NATO but participates in the latter's Partnership for Peace programme since 1999.

9. The UK is Ireland's largest single trading partner. Other key trading partners are the United States, Germany and France. UK exports to Ireland, at an estimated 17.1 billion GBP in 2011, makes Ireland

the UK's fifth largest export market. Inversely, according to the UK Foreign Office figures, at the end of 2009, Ireland was ranked as the UK's ninth largest investor. The first ever State Visit by a British monarch that took place in May 2011 was hailed as a sign of the strong bilateral relations between the two countries.

10. As regards Ireland's relations with Northern Ireland which is part of the UK, there is regular contact through the North South Ministerial Council (which brings together Irish Ministers and Ministers from the Northern Ireland Executive) and through the British Irish Council (which brings together British and Irish Ministers and their counterparts from Scotland, Wales, Northern Ireland, the Isle of Man and the Channel Islands).

11. The economy of Ireland is a modern knowledge economy, focusing on services and high-tech industries and dependent on trade, industry and investment. It was characterised by rapid economic growth until the recent financial crisis. The country's economy expanded until 2007 (the so-called "Celtic Tiger" phenomenon), driven mostly by construction and consumer spending, particularly after 2002. Migrant workers from the new EU member states provided some of the workforce for the construction sector and fed the domestic housing sector.

12. The 2008 crisis influenced Ireland significantly, especially its banking sector, and borrowing from international organisations became necessary. The near collapse of the property market put pressure on both the banking system and the government finances. In 2010, Ireland received 85 billion euros of financial support from the EU and IMF and some additional bilateral loans from UK, Sweden and Denmark.

13. In 2011, the public balance deficit was 13.1% of GDP, the largest of any EU member State. Government debt had increased to just over 108% of GDP, a huge increase when compared to only 25% of GDP in 2007.⁶ According to the Central Statistics Office of Ireland, current expenditure by central and local government as a percentage of GDP has continuously increased since 2002, reaching 39% of the total in 2011. It has been estimated that only 38% of this total concerns the banking sector, while 50% has been used to fund government services (including local government).⁷ Eurostat gives the share of local government in the total public debt for 2011 as less than 5 %. This cannot however be interpreted as a positive sign, given that local government in Ireland is heavily centralised and is funded by central grants.⁸

14. The important share of government spending in the public debt has important repercussions on the future of local government in Ireland. The Government has taken a number of measures to restore the public finances, leading to significant reductions in public sector pay, social welfare and capital expenditure since 2008. Budget cuts in 2009 included wage reductions for all public servants. The policy paper published in October 2012, which restructures the sub-county level of local government, is aiming at reducing the number of councillors from 1627 to approximately 950. The objective is to create an effective, accountable and cohesive system of local government in which a range of important decisions are made by elected members at sub-county level. The existing 80 town councils, whose replacement by "municipal district" councils accounts for the quoted reduction in councillor numbers, together represent 14% of the population of Ireland. The reduction can be considered to be warranted both in terms of eliminating duplication and in the context of a public sector reform and consolidation generally.

2.2. Domestic political situation and elections

15. Ireland is a parliamentary democracy. It has a population of 4.58 million (2011 census). Its capital, Dublin, houses a quarter of the total population (estimated 1.2 million in its metropolitan area). Irish is the first official language, although English, the second official language is almost universally used. The population is predominantly Roman Catholic (86.6%).

16. Its chief of state is President Michael D. Higgins since 29 October 2011. He was elected by popular vote for a seven-year term and is eligible for a second term. The head of government is the Prime Minister (*Taoiseach*), Enda Kenny (*Fine Gael*), since 9 March 2011.

⁶ <http://www.cso.ie/en/media/csoie/releasespublications/documents/otherreleases/2011/measuringirelandsprogress2011.pdf>

⁷ <http://www.corkeconomics.com/wp-content/uploads/2011/08/Irelands-Public-Debt.pdf>

⁸ http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-12-034/EN/KS-SF-12-034-EN.PDF

17. The National Parliament (*Oireachtas*) is bicameral. The Senate (*Seanad Éireann*) has 60 seats. 43 members (senators) are elected by panels representing vocational interests (Culture and Education, Agriculture, Labour, Industry and Commerce and Public Administration); 6 are elected by the graduates of two universities (National University of Ireland and the University of Dublin - Trinity College); the remaining 11 are nominated by the Prime Minister. Senators serve five-year terms.

18. The House of Representatives (*Dáil Éireann*) has 166 seats. Its members (*Teachta Dála* or TDs) are elected by popular vote (of citizens who are 18 or older) on the basis of proportional representation (single transferable vote system) to serve maximum five-year terms. A Bill to reduce the total number of members from 226 to 158 is currently being considered by the *Oireachtas*.

19. The members of local authorities (counties, cities, boroughs, towns) are also elected by proportional representation every five years. All Irish citizens and residents are eligible for election provided that they are resident in Ireland on polling day and are 18 years of age or older. Holders of certain offices and persons guilty of certain crimes are disqualified from holding office. Councillors come mainly from the established political parties. Regional council members are not directly elected; they are nominated by the local authorities that make up the regional bodies (8 regional authorities and 2 regional assemblies)

20. Currently, constituencies elect between three and five TDs (Section 6 of the Electoral Act 1997 places a maximum size of five members on constituencies). The Constitution requires that constituency boundaries be reviewed at least once in every twelve years, so that boundaries may be redrawn to accommodate changes in population. Boundary changes are currently drafted by an independent commission (required to refer to the most recent Census of Ireland when considering boundary changes), and its recommendations are usually followed.

Recent election results

21. The last parliamentary elections were held in 2011. The voter turnout in the 43 constituencies was around 70%.

22. The most important parties in the House of Representatives are the *Fine Gael* (36% of first preference votes, 76 TDs), Labour Party (19.4% of votes, 37 TDs), *Fianna Fáil* (17.4% of votes, 20 TDs), *Sinn Féin* (9.9% of votes, 14 TDs) and 15 independent TDs (12.6% of votes). The current structure of seats in the Senate is: *Fine Gael* (20 senators), *Fianna Fáil* (14 senators), Labour Party (12 senators), *Sinn Féin* (3 senators) and 11 senators nominated by the *Taoiseach*.

23. The last local elections were held on 5 June 2009. The political structure of the elected local officials is similar to the results of national elections. The voter turnout was 57.7%, rather lower than the general election turnout. Including seats for all councils (county, city, borough and town), *Fine Gael* won 556 seats, *Fianna Fáil* 407, Labour 231, *Sinn Féin* 127 and independents 275 seats.

24. As regards the presence of women in elected positions, the 2011 general election yielded a record number of women TDs: 25 women have been elected, meaning that the parliament will be 15.1% female (in the previous parliament, 13.8%, i.e. 23 TDs, were women). The Electoral (Political Funding) Act 2012 provides for the payment of state funding to political parties being conditional on parties having at least 30% women and 30% men candidates at the next general election. Seven years from the general election where this provision first applies, this will rise to 40%.

25. In the 2009 local elections, 17.1% of all candidates were women. It must be noted that the smaller parties all failed to meet the gender quota targets that they had adopted for these elections. In total, 165 female candidates were successful in the City and County Council elections (approx. 18% of the total) – with 56 of the successful candidates representing *Fine Gael*, 33 representing *Fianna Fáil*, 30 representing the Labour Party, 12 representing *Sinn Féin* and the other 15 from the smaller parties and independents grouping.⁹

⁹ <http://politicalreform.ie/2010/08/05/female-candidacies-in-2009-local-elections/>

2.3. Previous report and recommendations

26. The previous recommendation on local democracy in Ireland dates back to 2001, i.e. before the ratification of the Charter. The recommendation welcomed all proposed legal changes to improve the status of local governments in Ireland.

27. The recommendation included several notes, observations and recommendations concerning the Irish Government and parliamentary authorities. The salient points are:

- the minor involvement of local authorities in education, health and public transport and no statutory input to policing matters which may relegate them to a marginal role in a long run;
- highly centralised system of financing of local government allow for limited discretion to local authorities to determine local service levels and related expenditure levels;
- the need to grant local authorities their own taxation revenue so that a substantial proportion of local resources can be derived from it;
- the relatively weaker role of the elected mayor (*Cathaoirleach*) and the sometimes stronger position of the city manager;
- the lack of satisfactory remuneration for elected members of local government who mostly work on a part-time basis;
- the limited participation by women (16% of all elected members), young people and wage-earners in local government policy-making;
- the impossibility of removing the county/city managers without the sanction of the Minister for the Environment and Local Government;
- the definition of elected council's functions as "reserved functions" which are specified in statute law, all other functions – "executive functions" – being performed by the managers;
- the prolific use of regulations which might not be in harmony with the spirit of the Charter (Article 4, paragraph 2, and Article 8, paragraph 2);
- the weak legislative foundations and functions of the regional authorities; and
- the invitation to sign and ratify various additional protocols and conventions: Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159); the Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 169); the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144); the European Landscape Convention (ETS No. 176).

28. Following the recommendation, the Charter was ratified on 14 May 2002, with a declaration to the effect that Ireland intends to confine the scope of the Charter to the following categories of authorities: county councils, city councils and town councils.

29. The Local Government Act 2001 (No. 37 of 2001; "the LGA" in the following text) was enacted by the *Oireachtas* on 21 July 2001. Most of the provisions of the LGA entered into force on 1 January 2002 (Chapter 3 on direct elections of mayors was repealed by the LGA 2003). It introduced some important and expected changes in line with the recommendations (for more details see the following sections). It was amended several times between 2001 and 2012 (for example the amendment of the dual mandate in 2003; introduction of the household charge in 2011).

30. In 2008 the Government's Green Paper on Local Government reform "Stronger Local Democracy – Options for Change" was published, the central theme being the strengthening of local democracy, to make it more transparent and more responsive to its customers. One of the core proposals of this consultation document was the direct election of a Mayor of Dublin, which has not yet been implemented.

31. Despite the many positive changes, the rapporteurs would like to underline that several important local democracy issues have remained unresolved within the intervening years – numerous problems from the view of Charter principles remaining, particularly as regards the structures, the financing and the competences of local authorities in Ireland. Since the publication of the Programme for Government in March 2011, some extensive policy formulation work has taken place, which led to the adoption by the Government of a range of decisions for reform as set out in the "Action Programme for Effective Local Government", published on 16 October 2012 ("Action Programme" in the following text). This document was regrettably not available to the rapporteurs during their visit and was

received later. The rapporteurs had the possibility to discuss it with representatives of the Government and the Associations during their second visit in May 2013.

32. One particularly relevant issue is that the representatives of local government – four different associations (Association of County and City Councils of Ireland-ACCC, Association of Municipal Authorities of Ireland-AMAI, Association of Irish Regions-AIR, and Local Authority Members Association-LAMA) do not co-operate on a systemic basis to provide a common vision and voice with regard to the local government reform proposals in Ireland. The rapporteurs have taken note that the Government plans to facilitate the merging of the ACCC and the AMAI after the local government elections in 2014 and has declared that, if necessary, provision will be made in legislation for there to be only one formally recognised representative organisation of local government councils. As regards the other two associations, the LAMA primarily represents the individual interests of members rather than their corporate role, while the AIR members are also represented by the other bodies by virtue of the fact that they are drawn from membership of local authorities.

33. The Action Programme deals predominantly with structural changes (see Section 3.2 for a description of the policy proposals) and proffers little (in the short term) with regard to decentralisation, either regarding competences or finances. However, the rapporteurs find it encouraging that the programme strives to set out a clear rationale for stronger local government.

34. The rapporteurs have analysed the existing situation in the light of the previous recommendation and have come up with conclusions which highlight the progress that has been made but also reflect the many issues that remain.

3. HONOURING OF OBLIGATIONS AND COMMITMENTS

3.1. Constitution and legislative developments

3.1.1. Constitutional developments

35. Constitutional recognition of the role and function of local government appeared first in the Twentieth Amendment to the Constitution in 1999 (Article 28A). This amendment, approved by referendum (with over a million votes cast), recognises the role of local government in providing a forum “for the democratic representation of local communities” and for exercising and performing” at the local level” powers and functions conferred by law.

36. This is a fairly low level of constitutional protection. Formally, it means that local government functions must be expressly or impliedly conferred by legislation, and if they are not, they are considered to be *ultra vires*, i.e. beyond the powers of the local authorities. Broadly speaking, local authorities’ right to exercise any power or function which is necessary for local development and that does not contravene with general legislation, is significantly limited. The Government has argued that the power of “general competence” granted to local authorities in 1991 allow them to take action in the interests of their areas, so that they do not have to adduce specific statutory authority for all actions.

37. Ireland has a dualist legal system, i.e. international agreements are not part of domestic law, save by law of Parliament (Article 29, section 6). Therefore, although the Charter is binding on the State, it is not enforceable in domestic courts. Local authorities could sue the Government but there are no constitutional or legal guarantees for subsidiarity. Judicial review is the instrument available to those who wish to complain.

38. The fact that the principle of subsidiarity is not properly (if at all) reflected in either the legislation or in practice has historical and political sources. The trust of all actors in the advantages to be derived from subsidiarity and the government and public trust in the capacity of local officials seems to be limited. The Government’s opinion is that devolvement and further decentralisation can be realised only in long term perspective because of this fact.

39. The rapporteurs had the impression that, at national level, there is a strong tendency to keep the guidance of local government affairs in central government hands, with the argument that this is necessary in order to avoid mismanagement or clientelist tendencies and to guarantee efficiency. From the Government’s point of view, systemic weaknesses in the structures, operational efficiency,

governance and financing of the local government system as well as some instances of failure to perform certain functions adequately (resulting in the removal of certain functions from the elected councils) contributed to a lack of confidence and credibility in the local government system. This view of the situation is strongly contested by local authorities the rapporteurs had the opportunity to meet, who insisted on the fact that local authorities are efficient, reliable and willing to carry out functions that are within a local authority mandate in most European countries (transport, hospitals, education, water management, local tax collection, etc.). The two points of view are fully in opposition.

40. Challenges to the constitutionality of provisions in the LGA 2001 by a member of parliament (against prohibition on dual mandates as both a Member of Parliament and councillor) and by an ordinary citizen (against the system of replacing an elected member of a local authority by an unelected replacement) were unsuccessful.¹⁰ However, leave was given in a judicial review case to challenge the constitutionality of ministerial regulations, making it exceptionally difficult for a considerable number of people to run for election in local authorities.

41. The Constitutional Court has had cases concerning local authorities. For example, the “Pullen case” concerned a procedure under the housing act of 1966. The question that concerned the local authorities was, whether evicting a person from their flat (social housing) was in accordance with the Constitution and the Article 8 of the European Convention on Human Rights. The decision of the Supreme Court was negative on the ground that the Constitution protected dwelling rights.

3.1.2. Local Government Act 2001

42. The LGA 2001 was enacted, *inter alia*, to ratify the Charter, as international conventions can become part of Irish law only when transposed into national legislation. It also widened the discretion and generally strengthened the position of local governments by the introduction of a power of general competence, the recognition of the representational role of local authority members, statutory recognition of local government associations and a recognition of the distinctive nature of local authority membership - all measures designed to align the Irish system with the provisions of the Charter.

43. However, the law grants the DECLG a major role in the oversight and policy formation in relation to local government activities and overall responsibility for financing local government, the promotion of local government legislation and the transposition of most EU law relating to local government. The DECLG exercises a great deal of control over local government based on the argument that it provides an important part of local government finance and ensures service delivery standards (such arguments, at least partly, contradict the principle of subsidiarity).¹¹ The Government have explained that oversight in this context involves ensuring consistency with national policy as well as maximising effectiveness and value for money in national programmes operated by local authorities, and does not involve micro-management of local authority responsibilities. They aim to further delegate authority under the Action Programme (Table 2 in Chapter 4).

44. Reform of local government has been on the political agenda for the last 40 years and Ministers of DECLG have promised reform with little result. The 2008 consultation paper (Green Paper) aimed at strengthening local democracy and to make it more transparent, but it remained unimplemented. There is an almost universal recognition that radical changes are needed more than ever and that government in Ireland remains highly centralised. The Action programme of 2012 is a decision paper that addresses this as a key objective.

3.1.3. Policy Paper 2012: Action Programme for Effective Local Government

45. The introductory part of this document states: “The role of local government in Ireland is narrow. Some traditional functions have moved to specialist organisations in recent years due to necessities of scale, resources and expertise. To make the most of its resources and capacities, the role of local government will be strengthened, having regard to relevant criteria, with a wider range of suitable

¹⁰ Cited in “Local government in the Member States of the European Union: a comparative legal perspective”, ed. Angel-Manuel Moreno, National Institute of Public Administration, Spain, 2012, p. 319.

¹¹ Source: “Local Government in the member States of the European Union: a comparative legal perspective”, by Angel Moreno Molina, National Institute of Public Administration, 2012. The Government figures indicate that specific central government grants/subsidies constitute 22% and general purposes grants/pension related deductions 17% of local government revenues, while commercial rates and provision of goods and services provide 34% and 27% respectively.

functions. Its role will be refocused, particularly towards economic, social and community development. Central government involvement in operational details of local services will be further reduced and administrative controls and procedures streamlined. Local authority capacity to undertake services for a wider range of sectors will also be fully utilised”.

46. Among the focal points of the Action Programme, the change of local government structures that has not been updated since the 19th Century is primordial. The programme is proposing to renew those structures radically, by establishing a system of sub-county governance in the form of municipal district councils (abolishing the town councils), resulting also in a substantial reduction in the number of councillors. The legislation concerning territorial changes is still to be voted in the Parliament for amendments mainly founded on effectiveness and economy arguments.

47. Other issues stressed by the Action Programme are accountability, transparency, reserved powers (especially to ensure that councillors will no longer be allowed to direct the executive in respect of planning functions) and efficiency: the 830 million euros in savings made by local government since 2008 is mentioned, as well as the expected 511 million euros of savings identified in the Report of the Local Government Efficiency Review Group. The subject of external scrutiny also takes an important place. It is proposed to set up a new National Oversight and Audit Commission with external expertise, which should provide performance monitoring with a focus on key performance indicators, customer service and comparative performance of local authorities.

48. The reform also addresses recognised weaknesses such as duplication, fragmentation, isolation, inconsistency and lack of powers and resources of local authorities, in order to bring about stronger sub-county governance on a devolved basis for the whole county territory, in line with the principle of subsidiarity.

49. The details of the changes to the territorial structure are given below under Section 3.4.

50. The Government intends to convene a Forum of Dublin for elected representatives to consider proposals for the future governance of the Dublin area. In this context, a plebiscite will be held in June 2014 to see if the citizens of Dublin are in favour of the establishment of a directly elected mayor for their city.

51. The principle change regarding competences is the devolving of one core own activity to the local level. The Government is also considering delegating certain powers currently held by various government departments to local authorities. These include, initially, the management of Tourist Information Offices, smaller sea ports, piers and lights, coastal navigation aids, the delivery of an efficient and effective integrated local and rural transport programme, local sports partnerships, management of some property on behalf of the National Parks and Wildlife Service, provision of certain transport infrastructure and subsidies in respect of off-shore islands, flood risk management measures through local authorities, and certain functions in relation to the assignment and use of bus stops.

52. As regards housing, the Government maintains the responsibility for implementing schemes for rents, allocations and tenant purchase at local level but may devolve functions from national to local level in relation to what is now Rent Supplement (currently operated by the Department of Social Protection). They may also give certain functions to local authorities regarding the regulation of the voluntary housing sector. It should be noted that, at present, policy decisions at local level, for example the adoption of housing services plans, allocations policy, rent schemes and tenant purchase schemes, are reserved functions of the elected councils, within national policy parameters. In recent years, there has been increased delegation in housing programmes (for example, an allocation-based funding system for homelessness (see Action Programme, Chapter 4, Table 2).

53. Waste management is now being outsourced to private enterprise. The Government promises to highlight the importance of consultation with the elected representatives. The Irish households will start paying charges for water services as of 2014 but the collection of charges will not be a local authority competence. It has been decided to establish an independent State owned company for this task (“Irish Water”). According to the Action Programme, some aspects of the administration of the Water Services Investment Programme will be delegated to local authorities, in order to reduce the number of approvals required from the DECLG, although the role of the environmental protection

agency and the local authorities (either individually or in regional groupings) is essentially limited to waste management planning and environmental regulation.

54. The Government approved the introduction of a new local property tax, to be administered by the Revenue Commissioners and incorporating discretion on the part of local authorities to increase or decrease the rate of tax, with effect from 1 January 2015 onwards. This is seen as an important moment which paves the way for a more self-reliant and responsible local government by creating a link between local revenues and local expenditure.

55. The Finance (Local Property Tax) Act 2012 (Part 17, para. 157) provides that, as of 2014, in each financial year, the Minister for Finance shall pay an amount into the Local Government Fund equivalent to the local property tax paid (including any interest paid thereon) into the Central Fund during that year. The Minister for DECLG will distribute all Local Property Tax receipts received into the Local Government Fund in any year to local authorities in the form of General Purpose Grants. 80% from revenues will be allocated to their place of origin, and 20 % to others via the equalisation mechanism.

56. The Government is also proposing to establish a National Oversight Office to monitor the efficiency and effectiveness of local authorities including, *inter alia*, their compliance with national objectives and policies. This institution will supplement the oversight function already undertaken by the Local Government Audit Service (of the DECLG), the Ombudsman and the parliamentary Joint Committee on Investigations, Oversight and Petitions that deal with complaints related administrative issues concerning local authorities.

3.2. Local government structure: functions and responsibilities of local governments

3.2.1. Structure and competences

57. A total of 114 local authorities were established under the LGA 2001: There are 29 administrative counties with councils. In addition, there are five cities, each with their own city council: Dublin, Cork, Galway, Limerick and Waterford. Within these areas there are 5 “borough” and 75 town councils.

58. Each council has a mayor who chairs the meetings of the elected council and also fulfils a ceremonial role. Tasks which are ordinarily reserved for mayors who are political leaders elsewhere in Europe are shared out between the managers (appointed by the council) and the council itself (“the reserved functions”). The mayors of the cities of Dublin and Cork are called “Lord Mayor”, an honorific title.

59. Local authorities are responsible for implementing legislation on environment and matters such as land use planning, waste management, water and wastewater services (shortly expected to be transferred to the central authority), building control, many roads, some educational services and public libraries, fire services and public safety, social and affordable housing, the provision of recreational and social amenities, aspects of protection of natural heritage, flood protection and climate change adaption and mitigation strategies. The core service expenditure areas are social housing, water supply, waste management and road maintenance.

60. Under the *Garda Síochána* Act 2005, Joint Policing Committees, which consist of representatives of the relevant local authority, *Garda Síochána* (i.e. the national police force), and community and voluntary sector representatives) exist in each city, council and local authority area. The committees, which are chaired by a member of the local authority, facilitate greater consultation, cooperation and synergy on policing and crime issues between the parties involved.

61. There are also 8 NUTS¹² III level and 2 NUTS II level regions (for regional structures, see Section 3.9 for details).

3.2.2. “Reserved” functions

62. Local government functions are classified into “reserved” functions and “executive” functions.

¹² See http://epp.eurostat.ec.europa.eu/portal/page/portal/nuts_nomenclature/introduction

63. Only the elected members of local authorities can perform the reserved functions. Chairs and vice-chairs of councils can be removed from office by resolution of at least three quarters of the elected members. The LGA 2001 provides that a town council may apply to the Minister to dissolve a town council.

64. It is opportune to reiterate here that local authorities' right to exercise any power or function which is necessary for local development and that does not contravene with general legislation, is still formally significantly limited. Section 69 of the Act mandates local authorities to consult with other local authorities and some other bodies and, in carrying out their functions, to have regard to Government or Ministerial policies and the need for (i) a high standard of environmental and heritage protection (ii) the need for sustainable development and (iii) the need to promote social inclusion. Moreover, section 69(4) expressly provides that the wide powers conferred by sections 63 to 67 do not empower local authorities to exercise or enjoy any function prohibited by any legislation or to do not excuse them for failure to comply with any legislative pre-condition to, or restriction on, the exercise of any function.

65. Reserved functions embrace the key policy and financial decisions of a local authority: power to determine the policy of the local authority, to make land-use plans, to enact bye-laws, to confer civic honours, to adopt the annual budget and corporate plan of the local authority and to make an application to the Minister to change the boundaries of the local authority area. They also confer upon the council the power to direct the manager in the performance of executive functions. This position of primacy of the elected council is intended to be further enhanced by measures provided for in the *Action Programme* which foresees a greater oversight role for elected members, for example in the context of audits and a proposed power to hold other service providers to account.

3.2.3. Executive functions

66. Executive functions are performed by city and county managers. The elected members have extensive powers to control the manner in which managerial powers are exercised. However, in cases where elected members purported to use these powers to direct county managers, for example by giving planning permissions for developments which materially contravened the provisions of development plans or for zoning towns without subjecting the proposed zoning to required strategic environmental impact assessment procedures, the courts held that the county and city managers were not obliged to comply with these directions when it was unlawful to do so.

67. Managers are formally appointed by the elected members of the local authority. Such appointment is done on the basis of the recommendation from the Public Appointments Service (a central recruitment agency for the public service) following an open competitive process and normally only one candidate is proposed – “take or not”. They can be suspended or dismissed by resolution of the elected members, although Ministerial consent is required for their dismissal. The position of “manager” is filled by virtue of a recommendation of the Public Appointments Service, and not by a local competitive procedure.

3.2.4. Sectoral functions

68. These functions are conferred under a vast amount of sectoral legislation: for example, air management and waste management functions are carried out under the Air Pollution Act 1987, and planning functions under the Planning and Development Acts 2000-2010, etc. Local authorities also have extensive public safety functions, including protection from fire – both preventive and through operating the fire brigades – and promoting water safety and road safety. They are major providers of recreation and amenity infrastructure and they provide and maintain most public parks. Their main “social” function is housing.

69. All local authorities also have bye-law-making powers – both general (“in the interests of the common good of the local community”) and for various specific purposes. The range of Irish local authority functions is quite narrow. They have no role in providing public transport or personal social services, play an indirect role in policing through joint policing committees, which are chaired by local authority members, and have only a limited role in health and education.

70. The overall situation today, in the rapporteurs' opinion, indicates that we are in the presence of a system of local government that is a combination of local self-government and state administration offices under "one roof". How this situation will evolve after the implementation of the (comprehensive and ambitious) Action Programme remains to be seen.

3.2.5. Remuneration of elected representatives

71. In Ireland, most members of councils work for local self-governments on a part time basis and they receive financial compensations close to the general income level in the country for their category (their "representational payment" is a specified proportion of the salary of a member of *Seanad Éireann*). Allowances for elected representatives of city and county councils are estimated around 16 724 euros per councillor, per annum.¹³ They also receive allowances for chairing special policy committees and to cover the cost of attending local authority meetings. The total may reach around 35 000 euros per year. Comparatively, the average annual pay in Ireland is around 19,000 euros according to the OECD index. There is an additional allowance for being a mayor. These sums are taxable and subject to social insurance contributions.

72. Councillors may also secure appointment to bodies such as Regional Assemblies, Regional Authorities, education committees etc. which are external to the councils and which pay travel rates and allowances from their own budgets. Since May 2000, they can avail of a retirement gratuity which amounts to 3345 euros per year of service (with smaller sums added for each year prior to May 2000), entitling them to a gratuity payment of around 45,000 euros (the maximum grant being payable after 20 years of service).

73. As regards mayoral allowances, each authority can set its own amounts. It is understood that the Cork City and Dublin City mayors have allowances of the order of 120,000 and 80,000 euros respectively. For county councils generally, the amounts are of the order of 20,000 to 40,000 euros. The mayoral allowance is taxable, but on a modified scale, less onerous than that of standard income tax.

74. The volume of work done by councillors having increased with time, there are more and more full time councillors. For elected representatives working for the private sector, the situation is quite difficult.

3.3. Financial resources

75. Local authorities play a significant role in the economy where they are responsible for the expenditure of some 12 billion euros annually (7 billion euros of which is capital investment mainly on housing and water supplies, with the balance of 5 billion euros devoted to financing current expenditure). In relative terms, this represents the equivalent of over 6% of the country's GDP (some other sources provide a slightly higher percentage). However, this proportion is below the average found in developed countries. In 2012, expenditure of some 6.4 billion euros is anticipated: 2 billion in capital investment and 4.4 billion budgeted to finance current expenditure).

76. In relative terms, the main revenue sources to finance current expenditure by the local authorities are as follows as published in the 2012 Budget (concrete proportions of these sources in concrete budgets differ, according to the type and size of local government):

a. Commercial Rates (34%): Commercial Rates are property tax levied by local authorities. Rates are levied annually by the authorities who have exclusive rating jurisdiction within their own areas. As a general rule, rates are levied on the occupiers of commercial and industrial properties.

b. Specific Central Government Grants/Subsidies (22%): Grants and subsidies are paid by the Central Government to local authorities for specific services and /schemes that they undertake on behalf of a range of Government Departments.

¹³ The Government has drawn attention to the fact that the data published by Ireland's Central Statistics Office would appear to show average weekly earnings for a broad range of sectors higher than indicated here, and that the DECLG does not have figures for total annual receipts by councillors.

c. Receipts from the provision of goods or services (27 %): Local authorities have powers to charge for services they provide, for example, commercial water charges, housing rents, waste charges, parking charges, and planning application fees.

d. General Purposes Grants/Pension Related Deductions (17%): This fund provides lump sum grants to local governments and its sources are motor tax and household charge receipts.

77. In 2009, property tax on “secondary” houses (Non-Principal Private Residence Tax) was introduced as a lump sum tax. This is a local tax, the proceeds of which are retained by local authorities as a direct source of finance to meet the cost of local services. In 2012, another centrally determined lump sum charge was introduced at the level of 100 EUR per dwelling (Household Charge). The revenue from this tax is not a direct source for the local budgets (it is transferred to the Local Government Fund to be used for equalisation purposes). The future Local Property Tax announced in the Action Programme is also expected to be centrally collected (committed to the Local Government Fund) and not directly distributed to local budgets. In any event, in the short term, it will not increase local authority revenues, since an equivalent amount will be deducted from the grants allocated to the local authority concerned. The Government explains that local authorities will have discretion to vary the rate after 1 January 2015 to take account of requirements in their area.

78. As regards property, a local authority may own, buy, sell or inherit property. It may enter into a contract with any person in respect of any matter relating to its functions.

79. The fiscal role and functions of the various regional authorities are marginal from the point of view of national finance (but significant in re-allocation of EU resources).

80. The rapporteurs learned that partnership companies had been set up in the 1990s to strengthen local authorities. The Government established an intermediate company as a conduit for EU funds, which side-lined local authorities because elected people were excluded from the boards of these companies. In their meetings, the rapporteurs were told by some local authorities that EU funds were concentrated in government hands and that local authorities would benefit from more direct contact with and information from the EU Committee of Regions.

Financial equalisation

81. The Local Government Fund provides lump sum grants to local authorities and is expected to serve also as an equalisation tool. However, the system of distribution of grants to local governments from the Local Government Fund is not transparent and the rules have been set without consultation with local authorities. The equalisation formula existed for a short period only, because it included about 800 parameters and was not operable in reality. From 2008 onwards, equalisation has been done on the basis of an administrative assessment of needs and resources.

82. The Government have informed the rapporteurs that while equalisation does not operate through a simple formula or model, it does involve a process using real current data. Developed on the basis of a “needs and resources” study of local government financing, it takes into account the individual circumstances of local authorities in determining annual funding allocations, (making use of regular dialogue through quarterly financial reports and specific submissions covering, *inter alia*, demographic, social, economic factors.

3.4. Territorial issues

Local authorities

83. As regards the 114 local authorities established under the LGA 2001 (29 county councils, 5 city councils, and within these areas 5 borough corporations and 75 town councils), the boundaries are shown on maps prepared by the Chief Boundary Surveyor under the Survey (Ireland) Acts 1825 to 1870, or by the Commissioner of Valuation or otherwise in accordance with law. They can be altered by the Minister after considering the report of the Local Government Commission at the request of local authorities. The recent policy brief indicates the will for major changes in this structure – an independent Boundary Committee has been established to draft the reform proposals.

84. As indicated earlier, a key element of the new reform is structural change. Assuming that the respective legislative changes will be made, the County Council configuration will essentially remain intact – indeed, it will be reinforced as the "primary element" of local government in Ireland (there will be two or three merger situations whereby a city council will merge with its adjacent county council).

85. The 80 Town Councils which existed as "islands" within the counties are being abolished and will be replaced by a creation to be called "Municipal District Councils" (MDCs). There will be perhaps four or five Municipal District Councils in each county, but possibly less in some instances. They will be a form of amalgam between the existing Town Councils and the electoral areas of the County Councils but will have a series of powers in their own right. A key point is that all of the country - urban and rural - will be embraced by the MDCs. The new configuration of municipal districts will be drawn up on the basis of a report by an independent statutory boundary committee which is currently carrying out a review of local electoral areas. As part of the review, the Boundary Committee has issued a public invitation for submissions, to give members of local authorities an opportunity to make an input into the configuration of the municipal districts.

86. The biggest innovation in the policy document is that the councillors who are elected to the MDCs will also be members of the County Councils. This arrangement will address the prevailing (undemocratic) situation whereby those living in towns have two votes (one for town council, one for county council) while those living in rural areas have just one vote. Changing the structures and the election system will have the effect of reducing the number of council seats from 1627 to approximately 950.

87. In the rapporteurs' opinion, the structural changes are a positive element of the proposed reform, as it provides a solution to an unfair situation whereby those living in towns had two votes as compared to the rural areas which had one. It also simplifies the structure. These changes are also expected to be followed by other important steps, including greater subsidiarity, avoidance of duplication, a review of boundaries, better representational balance between urban and rural areas and a cohesive administrative/executive reorganisation.

88. As regards regional structures, see Section 3.9 for details.

3.5. *Relations between central and local authorities*

89. As already indicated, local government in Ireland is considered to be excessively centralised and the current trend will probably not change in the short term. The central government's main argument for limited devolvement in the short term is the limited trust in the capacity of local governments to provide high quality "standard" services and value for money.

90. Another frequently used argument against the further transfer of responsibilities to local authorities is the misuse by some elected local government members of their reserved powers, their refusal to make decisions necessary for the proper performance of their statutory functions and to levy taxes (resulting in the progressive removal or curtailment of some of the reserved powers of elected members in recent years and in their transfer to city and county managers) or because the Government deemed certain functions by their nature to be more appropriate to specialist agencies. It is said that elected local authorities have been content to permit the transfer of their powers to levy charges for services and taxes transferred to city and county managers, and that elected local authorities prefer to perform those functions which they perceive will be popular with their electorate and leave most of the difficult decisions to management.

91. The reality is obviously more nuanced. The rapporteurs have been told that the central government is also sometimes ineffective when dealing with local matters. The issue of the collection of the quite unpopular household charge in 2012 is an interesting example in this respect. This is one case where central and local authorities accuse each other with inefficiency. It would appear that the government started by collecting it centrally. It became clear mid-term that households were reluctant to pay it. The collection rate was low (for example 65% in Cork) because there was no political motivation to pay it on the part of citizens once they realized that this money would not go to the local authorities as they had thought. Also, in the absence of a database or register of households, and the absence of a law for sharing information among state bodies, it was difficult to follow up and check on abstentions. The Government decided to delegate the collection of the household charge to the local

authorities, who were left in the unfortunate position of having to collect them in a very short time (three months), risking criticism of inefficiency in tax collection.

92. Regarding the collection of the household charge, the Government explains that the intention was for the local government system to collect the charge, through a shared services centre (the Local Government Management Agency). Local authorities were asked to also collect the charge alongside the shared services centre. They note that 70% of the citizens paid the charge during its introductory year and this charge has been used to fund local government (receipts being routed directly to the Local Government Fund). They also draw attention to the value of this exercise which allowed for the collation of data (and sharing of information between Agencies) in relation to residential property which will be an essential element for the implementation of the Local Property Tax in 2013.

3.6. Supervision of local authorities

93. The decisions of public bodies including local or regional authorities may be challenged (i) by an appeal to an administrative tribunal, and/or (ii) and/or the courts and/or (iii) by judicial review or (iv) by complaint to the Ombudsman. No administrative authority has powers to question how local authorities exercise their functions except the Environmental Protection Agency and the Ombudsman.

94. The most important control is financial as government departments (DECLG, Transport) provide an important part of their financing. The government argues that this control is mainly connected with the execution of central public schemes by local authorities.

95. The DECLG also has specific powers such as to remove members of local authorities from office on a number of specific grounds stated in section 216 of LGA 2001 and to appoint a Commissioner to act as a local authority (although this power has been used very rarely, the latest instance being around 25 years ago). This being said, where local authorities are exercising their planning functions, the Minister may at any time issue guidelines to them.

96. The Ombudsman examines complaints concerning the administrative actions of local authorities and complaints concerning compliance with Part 3 of the Disability Act 2005 under the Ombudsman Act 1980 as amended. They may not examine decisions on planning applications or decisions made by elected members exercising reserved functions. The Ombudsman reports to the parliamentary Joint Committee on Investigations, Oversight and Petitions that deal with complaints related to administrative issues concerning local authorities. The Committee may examine witnesses; it can convene local authorities and make recommendations for redress to the government or, eventually, to the Parliament for a change in the legislation. For example, the Irish Language Commissioner (*An Coimisinéir Teanga*) was asked to appear before the Committee, when national museums were not fulfilling their obligations under the Official languages Act 2003, in obstruction of the official policy of bilingualism. In its 2011 report, the Commissioner noted that 39.5% of the language related complaints concerned local authorities.

97. In the rapporteurs' opinion, it could generally be argued that supervision and regulation of local authorities in Ireland is too detailed. The most important instruments are regulations drawn up by central authorities (normally so tightly drawn that they can limit local initiatives), subtle forms of control such as notes, comments and explanations on legislation, technical inspection, enquiries by the DECLG and budgetary restrictions and "caps". The central government can, under the section 199, 8a of LGA, revoke any local bye-law, if considered "objectionable" although, once again, this power has apparently never been used.

98. The Government argues that, in practice, there are no cases of local initiatives having been unduly limited by central government instruments and that the DECLG does not engage in micro-management of local authority functions. A large number of requirements for specific approval, sanction, etc. by the DECLG have been dispensed with over the past 20 years or so. A further programme of relaxation of controls and increase in local authority discretion will take place under the Action Programme.

99. The Government also argues that there is an unavoidable responsibility on the DECLG to ensure consistency with government policy and international obligations, and maximum value for money in local authority programmes. In the rapporteurs' opinion, the argument about value for money,

however, contradicts the subsidiarity principle, in preferring central efficiency control for local programmes.

3.7. Status of the capital city

100. There is no special law regulating the status of Dublin as the capital city. The Local Government (Dublin) Act 1993, provided for the reorganisation of local government in the Dublin area, including the establishment of three new county councils and related matters.

101. The four local authorities in the Dublin area use their statutory powers to coordinate their activities. The Dublin Transport Authority has a statutory responsibility to ensure that they cooperate and coordinate on transport matters.

102. The fact that Dublin is both a capital city with sub-divisions and a region where a quarter of the population of the country resides gives it a special position. At present the Lord Mayors of Dublin are elected each year by the Dublin City Council from among its own members. It is open to the members of Dublin City Council to continue a mayor in office.

103. In the rapporteurs' opinion, the mayor's (direct or indirect) election for a term of, for example, five years would enhance the power of the mayor as opposed to that of the manager and allow for continuity in the implementation of long term objectives. The referendum on this issue is expected to be held in 2014.

3.8. Autonomy and freedom of association

104. Local authorities have a general power to act jointly with other local authorities, but this power is directly mentioned in the LGA in relation to very few own functions. On the other hand, Part 10 of the LGA 2001 enables a local authority to enter into an agreement with another local authority for the carrying out by the latter of any function that can be performed by the first-mentioned authority. Professional associations of local authorities are recognized by the LGA.

105. It should be pointed out that the local government representative structure appears to be weak in Ireland. The Irish local government associations do not systematically act together and because of their fragmentation, are not sufficiently resourced to allow them to act as real representative bodies internally and internationally.

106. Local government interests are also fragmented across four representative bodies, which do not always communicate well and do not present a united front vis-à-vis the government, a situation arguably less than ideal for negotiation purposes. The rapporteurs learned during the visit that the meetings the DECLG held with the associations during the preparation of the policy paper had been mostly done separately, which did not allow for a cohesive response to the reform proposals. The positions of AMAI and ACCC towards the current reforms differ substantially; however they were able to work on some aspects of the reform together (especially to create the list of allocation of responsibilities between counties and municipal districts).

107. The DECLG informed the rapporteurs that a total of 16 engagements had taken place since the Minister took office in March 2011. Local government reform (general proposals or particular aspects) would have been the main item in these encounters. The DECLG now intends to put in place a working group for engagement of the local authority members associations in the local government reform implementation process.

3.9. Regional democracy: The Reference Framework for Regional Democracy

108. The rapporteurs have heard from various sources that "in Ireland, people think locally or nationally, but not regionally". Essentially, the main role of the regions appears to be to serve as the tool for "drawing down" financial assistance from EU funds.

109. There are 8 NUTS III Level regions in Ireland since 1994: the Border, West, Midlands, Mid-East, Dublin, South-East, South-West and Mid-West regions. This first level has no revenue generation powers; they are weak and their mandate is very restricted. They are governed by Regional Authorities composed of local politicians from their constituent county and city councils with

powers to review development plans, to prepare regional planning guidelines and economic and social strategies and to encourage local authorities to coordinate their activities and act jointly when appropriate and particularly relating to climate change adaptation. They have no real powers to enforce coordination. They depend on financing from councils and the central government.

110. Ireland is also divided into 2 NUTS II level regions for EU Structural Funds purposes: The Border Midland & Western Region (BMW) and the Southern & Eastern Region (S&E). Two Regional Assemblies comprise existing elected members of city and county councils to promote the provision of public services in their areas, manage regional EU financial supports and monitor the general impact of EU assistance programmes. Their resources are agreed upon every seven years.

111. According to the new policy brief, at the regional level, the number of regional authorities/assemblies will be reduced to three. This is in part a reflection of the fact that the regional authorities have little or no direct powers and functions and are not directly elected.

112. The capital city of Dublin is both a region and a county with the same geographical boundaries. It has a city council (*Dublin City Council*), three county councils (*Dún Laoghaire – Rathdown, Fingal, and South Dublin*) and a regional authority (*Dublin Regional Authority*) responsible for coordination.

113. It must be noted that after the failure of the planning system to prevent the oversupply of houses and properties between 2003 and 2008, the Planning and Development Act 2010 brought in procedural requirements in favour of Regional Authorities enhancing their powers. Local authorities can be required to comply with both government and regional land use and climate change policies.

114. The Association of Irish Regions has argued for a legislative framework to further strengthen the regions which they claim could be a key driver in addressing issues such as unemployment and social inclusion and for maximising EU programme benefits. Regions could share service delivery with transport, waste and water management etc. However, the discussion with the interlocutors during the visit indicates that this is not a priority area of debate in Ireland.

115. The rapporteurs are of the opinion that, in Ireland, the regional level of government exists only formally. The counties remain the main reference point as regards local government, and the new policy paper does not change much in the make-up of regions and their competences.

116. The Government have explained that, having regard, *inter alia*, to the lack of regional identity in Ireland and attitudes towards regional structures, they decided to retain a regional dimension in the local government system, subject to significant structural consolidation, updating of functions and streamlining of operational arrangements. In particular, the regional bodies (Regional Assemblies) will, in future, perform an enhanced function in the formulation of Regional Spatial and Economic Strategies, and all relevant agencies will be required by legislation to participate in this process and to adhere to the adopted strategies in performance of their own functions. The new Regional Assemblies will also have an important role in the new local government oversight process, including performing an intermediate role between central government policy and local authority strategies and programmes. Many of the existing regional functions, including the role of regional assemblies in relation to EU programmes, will be retained, but updated in light of experience to date. The new regional structures will also be used for the adoption of strategies in sectors other than the spatial/economic area. There are already indications that the new regions will serve as the basis for developing of strategies in relation to sectors such as waste and river basin management.

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

Article 2 – Constitutional and legal foundation for 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.

117. The Charter was ratified on 14 May 2002, with a declaration to the effect that Ireland intends to confine the scope of the Charter to the following categories of authorities: county councils, city councils and town councils.

118. Constitutional protection of local self-governments did not change during the evaluated period and is rather weak.

Article 3 – Concept of local self-government

Article 3 – Concept of local self-government

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

119. It cannot be said that local government in Ireland manages a substantial share of public affairs, certainly when compared to local government in other European countries. The interlocutors the rapporteurs met during the visit were sceptical about the policy paper granting any new role to local authorities in education, health, welfare, public transport, and policing, which are still essentially run by the central Ministries or agencies.

120. Since the last Congress Recommendation, no new competences have been transferred to local authorities. In fact, the opposite is true, for example the centralisation of water management, which was mentioned at several meetings. The rapporteurs were informed that, if anything, the transfer of powers has travelled in the opposite direction - from local to the national level. However, as indicated in Section 3.1.3, a certain limited amount of delegation and devolution may actually see the day in the near future as a result of the 2012 policy brief. The Government, through its Action Programme, is aiming to achieve a long term expansion of the role of local government, particularly by virtue of the enhanced confidence and credibility that they hope will ensue from the improvements that will be implemented through the Action Programme, particularly in local government efficiency, finance, governance and structures.

Article 4 – Scope of local self-government

Article 4 – Scope of local self-government

- 1 The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
- 2 Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
- 3 Public responsibilities shall generally be exercised, in preference, by those authorities who 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.
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121. In the rapporteurs' opinion, this principle is not well respected in Ireland, especially with regards to discretion and consultation. Neither is the subsidiarity principle sufficiently incorporated into the Irish legal system. The *ultra vires* principle limits the right of local self-governments to manage their own affairs under their own responsibility. The LGA 2001 partly improved the situation, albeit not sufficiently.

122. Representatives of local authorities gave several examples of situations that should, under the principles of Charter, be under full discretion for local council decisions, but are very much centrally regulated, supervised or revoked. Discretion is highly circumscribed also by the use of national regulations, guidelines, statutory instruments, and frequent obligations to secure prior approval in advance of decisions being taken (see for example information about local public finance).

123. As already indicated, the application of the *ultra vires* principle to local authority functions has been significantly relaxed and an extensive range of central controls and requirements for prior approval have already been dispensed with or reduced (including various matters listed in Table 2 of Chapter 4 of the Action Programme). More significantly, it has been decided to extend further local authority discretion to a number of local authority functions, as set out in the Action Programme. The Government also claims that the operation of the principle of subsidiarity will be enhanced under the new arrangements, whereby a significant number of functions will be performed on a fully devolved basis at district level, without reference to county level.

124. The Chief Justice's Office clarified the situation for the rapporteurs in a written comment, which noted: "However, Article 4 para.1 of the Charter provides that the basic powers and responsibilities of local authorities shall be prescribed by the constitution or statute. In Ireland, such powers and responsibilities are set out in legislation and local councils can only exercise the powers and responsibilities that they are permitted to do in the legislation."

125. This letter also explained the relations between managers and councillors further as follows in a telling example: "... most of the powers of local Councils are carried out by a public servant known as a City/Manager. Councillors can direct the Manager to do something. If they fail to do this, the Councillors can sue the Manager in court following a motion passed by the Council. Section 140 of the Local Government Act 2001 provides that the elected Councillors may pass a resolution requiring that any particular matter or thing specifically mentioned in the resolution and which the local authority or the Manager can lawfully do or effect to be done or effected in performance of the executive functions of the local authority, be carried out. It must be a matter which the Manager can lawfully do. This power was considered by the Supreme Court in the case of *P & F Sharpe Limited v Dublin County Council* [1989] IR 701. A case which illustrates the role of the Manager is *East Wicklow Conservation Community Limited v. Wicklow County Council and Treacy* [1997] 2 ILRM 72. The Council wished to build a landfill and commissioned consultants to find the most suitable location. On receipt of the report, the Councillors passed a resolution rejecting the proposal. The Manager confirmed that he did not intend to comply with the resolution of the Councillors. The Manager was of the view that legally he was obliged to provide a place for the deposit of domestic waste material collected by the Council. In the High Court, Mr Justice Costello held that the Manager was not required to comply with the Councillors' resolution because the works were required under legislation. On appeal to the Supreme Court, M. Justice Blaney upheld this decision".

126. A regular and standard system of consultations between central government and local authorities has not been functionally established. There are no general provisions in Irish law outlining a general principle or right for local authorities or their associations to be consulted by national government. However it should be noted that numerous specific provisions of Irish law do provide for consultation of local authorities in specific instances. The opinion of the rapporteurs is that the duty to consult all relevant matters with local authorities in a regular and systematic way is so important that, as a core principle, it should be part of local government legislation, and not only mentioned on a "piece by piece" principle.

127. The preparatory process for the "Action Programme" can be used as an example. According to the information from various interlocutors, there were some public meetings organised by the DECLG, a questionnaire was sent out to local authorities with a two-week deadline for replies, and the

Minister held some separate meetings with the different associations. The responses to the questionnaire were analysed by an external agency and considered in the Action Programme.

128. The Lord Mayor of Dublin informed the rapporteurs that they were not consulted on the decision to establish a central water authority and to transfer this responsibility from the local to the central level. Apparently, Dublin authorities had proposed several changes to the existing legislation, none of which were either reflected in or incorporated into the policy paper. The Government explained that a comprehensive public consultation process had been conducted in 2012 regarding the proposed reform of the water sector and Irish Water had been established as an independent State-owned company. These opposing views are symptomatic of the issues that exist concerning the consultation process in Ireland.

129. That being said, all interlocutors confirm that the quality of consultation processes improved between the monitoring visit of the Congress in October 2012 and the follow up visit in May 2013.

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.

130. Alteration of boundaries can be initiated by local governments, but also centrally. According to Article 61.—(1) of the LGA, "Following consideration of a report by the Local Government Commission with respect to the boundary of a local authority, the Minister may, by order, alter the boundary of the relevant county, city or town.

131. Some consultation in advance of boundary changes is formally provided for in law, but can be cosmetic in practice. Referendums are not provided for by law in the case of boundary changes, although local plebiscites are permitted by law for a very limited number of other local issues (such as changing the name of an area, etc.) The legislation that governs the alteration of local authority boundaries [Section 29 of the LGA 1991 and the Local Government (Boundary Alteration) Regulations 1996 (S.I. No 217 of 1996)] contain provisions for consultation. These procedures include the publication of newspaper notices, submissions by interested persons (which must be considered) and the availability for public inspection of the proposal.]

132. The local authorities claim that there was not sufficient consultation as foreseen in Article 4, para.6 of the Charter (in due time and in an appropriate manner) on the new territorial structure proposed by the "Action Programme", either with citizens, councillors or associations. The DECLG contends that they did consult. The rapporteurs note that the lack of an institutionalised procedure and the fragmentation of the associations representing local authorities must have contributed to creating this unsatisfactory situation.

133. The DECLG has informed the rapporteurs that a Local Electoral Area Boundary Committee has been recently established to review and make recommendations on local electoral area boundaries in the context of the results of the 2011 census and the Action Programme. The Committee has been asked to report back no later than May 2013. The Committee has issued a public invitation for submissions as part of the review process.

Article 6 – Administrative structures

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

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

134. The LGA significantly improved the right of local self-governments to determine their own internal structures (Article 158-1), but in reality the financial limits provided by the central government still remain the core determinant of the number of staff employed by local authorities.

135. The conditions of service (such as qualification requirements) of local government employees are to a large extent determined centrally. Pay scales for most local authority staff are set on a nationwide basis through a structured negotiating mechanism with the Local Government Management Services Agency (representing the Government and County Managers) negotiating with the trade unions. For the past number of years, there have been decreases in the pay scales so as to respond to the national funding emergency and, partly, as a result of the increased insistence for value for money in relation to public spending in general. In March 2012 local authority staff salaries stood at 28,765 euros per annum as compared to 37,243 euros in mid-2008 which might be acceptable, taking into account the broader economic constraints and the need for savings on all levels of government.

Article 7 – Conditions under which responsibilities at local level are exercised

Article 7 – Conditions under which responsibilities at local level are exercised

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

136. The LGA significantly improved the status of local elected officials, but some obstacles still remain. The LGA clearly defines the code of conduct that applies and also the incompatibilities.

137. As indicated under its Section 3.2.5, most members of councils work for local self-governments on a part time basis and receive financial compensation. However, there is no legislation containing rules for private employers to provide “free time” to elected officials for participation in local matters. This situation prevents many private sector employees to be a candidate for local elections, despite of the fact that most of the official business of councillors occurs outside of normal business hours.

Article 8 – Administrative supervision of local authorities' activities

Article 8 – Administrative supervision of local authorities' activities

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

138. The adoption of the LGA and consequent amendments to the legislation did not manage to decrease the high level of different forms of central supervision on local government activities (a telling statistic: the word “Minister” appears 461 times in the LGA).

139. The administrative supervision of local government is detailed – national government remains highly interventionist in local decision-making. In their written replies to questions put by the rapporteurs, the DECLG maintained that:

“Where responsibilities rest with local authorities, the exercise of these is occasionally subject to control and monitoring by Government Departments at central level with a view to –

- aiming to ensure consistency (e.g. in terms of standards and level of service) throughout the State in programmes and schemes;
- maintaining control over the financial impact of local authority activities;
- keeping Government abreast of the progress of programmes and activities at local authority level;
- ensuring adequate compliance with national objectives and international obligations.

For example, the specific sanction of the Minister for the Environment, Community and Local Government is required in particular instances, such as for borrowing and lending, which are set out in the Local Government Act 2001. In the light of the current very difficult economic circumstances, it has been necessary for the Department of the Environment Community and Local Government to introduce additional financial management controls and monitoring in relation to local government expenditure.”

140. The following are some further examples of this “interventionist” approach:

- The central government can, under Section 199, 8a of the LGA, still revoke any local bylaw, if it is considered “objectionable”, even if they have never done so.
- According to the section 212 of the LGA, the Minister may cause such public local inquiries to be held as he or she may consider necessary or desirable (a) for the purposes of section 216(1) (a) or the functions conferred on him or her or by any other enactment, or (b) in relation to the performance of the functions of any local authority. The DECLG explains that Part 20 of the LGA, of which section 212 is part and which provides for matters related to public local enquiries, has not yet been commenced. Part 20 thereof was intended to replace a number of existing provisions in local government legislation, the key provision of which is section 83 of the Local Government Act 1941 (which remains in place). Section 83 enables the Minister to appoint a person to carry out a local enquiry “for the purposes of any of the powers and duties for the time being conferred or imposed on him”. This power was envisaged to be appropriate where a local authority’s functions are not being duly and effectually performed. The power has been used only in the most exceptional circumstances.

141. As mentioned before, the new Action Programme contains the risk, if implemented as it is, of increasing the level of supervision even more through the establishment of a new additional National Oversight Office to monitor the efficiency and effectiveness of local authorities including, *inter alia*, their compliance with national objectives and policies. A lot will depend on the final Statute of the Office that is expected to operate independently of the DECLG. The DECLG also argues that the main goal of the Office will be evidencing local authority performance and consistency with government policy and not direct supervision. The Government stresses that local authorities are expected to be important stakeholders of the process.

142. The specific issue that should be mentioned here is that there are quite a number of cases where local government issues have been raised in courts in the context of the services which local councils provide and the law concerned with such services (legal supervision). For example in the case of *Brady v Cavan County Council* [2000] 1 ILRM 81, the applicant claimed an order against the local council requiring it to keep the roads in its care in an adequate condition, despite the plea that to do so would leave the council with inadequate funds to discharge their duties in other areas such as public housing or water sewerage facilities. A majority of the members of the Supreme Court rejected this claim, resting its decision on the ground that the council did not have the means to comply with the order and that there was no way of knowing whether the central government would have assisted it. This case concerned a poor local authority that would take twenty two years to bring its entire road network into a satisfactory condition. Another aspect of the judgment is the separation of powers between the judicial branch of government and the legislative branch of government which is established by the Constitution. The role of the courts is not to make policy decisions or to direct how government monies should be spent. That is a matter reserved for the legislature.

143. Another specific way of supervision is when members of the public, who feel that they have been treated unfairly, may also make complaints against local authorities to the Ombudsman. The Ombudsman can examine complaints about how local authority staff carries out their everyday executive and administrative activities. These include complaints about delays or failing to take action.

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.

144. In the rapporteurs' opinion, it is difficult to claim that these provisions are fully respected. The system of calculating real costs for all "own" and "delegated" local government functions are not operational and the disputes concerning the appropriate or non-appropriate level of funding are not evidence-based. Rather surprisingly, local governments and their associations do not regularly complain against possible underfunding and limited financial management discretion.

145. The revenues of local governments significantly decreased during the period of the economic crisis after 2008. Apparently, for the time being, these cuts have not had a dramatic impact on the quality of local public services, although several local governments claim that their financial situation is not sustainable from a medium or longer term perspective.

146. The DECLG's point of view concerning the relation between responsibilities and resources of local governments is that, by adopting an appropriate budget to meet identified needs, local authorities have a good level of ability to provide themselves with the financial resources that they need to discharge their functions.

147. Several local authorities are currently in a very difficult financial situation. Some sources of revenue have effectively disappeared such as development levies; central government grants have been cut, and local authorities have been told to freeze local rates on commercial properties. The impression the rapporteurs had during the visit is that public sector savings are not proportional between central and local level, with heavier impact locally. The Government, in their written replies to the rapporteurs, maintained another point of view, according to which local authorities have had an adequate level of funding in 2012 to provide a reasonable level of local services to their communities.¹⁴

148. The public finance system in Ireland cannot be said to constitute a sufficiently diversified and buoyant system, keeping pace with the evolution of local tasks. Local governments manage one local tax, commercial rates and can collect fees for local services. Especially smaller and economically weaker municipalities are too dependent on central grants.

¹⁴ "General purpose grant allocations for local authorities in 2012 amount to €651m. However, the Department of the Environment, Community and Local Government has been required to withhold some €15.7m of this amount due to the level of compliance with payment of the Household Charge in the third quarter of 2012. In addition, local authorities will continue to retain pension-related deductions in 2012, together with income from the €200 charge on non-principal private residences. This will provide an adequate level of funding in 2012 for local authorities to provide a reasonable level of local services to their communities."

149. The new property tax to be introduced is slightly changing the situation in local finance. Because it is expected that local governments will have the right to modify the rates within a given interval, this tax is expected to establish a better link between local revenue and expenditure (although the tax will be centrally administered). The Government's plan is to return 80 % of the revenues back to the local authorities where the tax was collected and use only 20 % of revenues for equalisation purposes. On the other hand, this tax will not mean extra revenues for local governments – this is almost impossible given the current economic situation in Ireland.

150. Local financial managers indicated that the level of discretion as to how to use revenues is strictly limited – about 90 % of revenues need to be used to cover “fixed” costs. And as said earlier, the equalisation system remains a mystery to practically everyone in the local government system.

151. Concerning borrowing by local authorities, the LGA (Article 106) states that a local authority may borrow money in any manner which it considers suitable for the effective performance of its functions. However, borrowing by a local authority under this section can only be with the sanction of the appropriate Minister.

152. Ireland recorded a General Government Deficit in 2002 and with further deficits forecast, the Government, in the context of Budget 2004, set a limit of 200 million euros for the contribution of the local government sector to the deterioration in the General Government Balance (GGB) in any one year. This 200 million euro limit was reaffirmed in 2009 when the DECLG reiterated the importance of controlling the local government sector's GGB contribution and put in place a range of specific measures to ensure that the annual outturn remained within the 200 million euro deficit limit.

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. |

153. Different parts of the LGA regulate local authorities' right to associate and co-operate.

154. Section 85 of the LGA provides that two local authorities may enter into an agreement for one of them to perform a function on behalf of the other. Section 86 provides for two or more local authorities to make arrangements for the joint discharge of any of their functions. Section 87 provides for the Minister for the DECLG to make regulations requiring local authorities to enter into an agreement for one authority to carry out the function of another authority. The use of the powers provided in section 85 is a “reserved function” of the elected members of each local authority.

155. Section 225 of the LGA regulates the right to associate as follows:

“ ...

(2) A local authority may hold membership of an association of local authorities.

(3) An association of local authorities may carry out such activities as are necessary to represent the collective interests of the local authorities which constitute its membership, including –

(a) the undertaking of research and other studies,

(b) the promotion of education and training,

(c) the provision of policy support and other assistance to its constituent authorities as regards any matter relating to local government, or

(d) the making of submissions to the Minister or other public authorities as regards such matters.

(4) An association of local authorities shall operate in accordance with its constitution or other procedural rules (by whatever name called).”

156. This part of the LGA also provides statutory recognition for local authority representative associations.

157. According to the DECLG, there are examples of cooperation between local authorities throughout the country that provide efficiencies alongside enhanced customer services. Under their local government reform programme, one of the important local authority initiatives is that of Shared Services, which will provide an important mechanism to make savings in administrative costs across local authority boundaries, without having an adverse impact on front-line services. They expect savings that could potentially be in the region of 10-15% of baseline costs. Priority areas for consideration include regional Shared Payroll, Integrated Procurement, Transactional HR and both Back/Front Office ICT Services. The re-organisation of these 'back office' functions will afford local authorities the opportunity to manage both their staff and their assets in a more cost-effective manner in the long term.

Article 11 – Legal protection of local governments

Article 11 – Legal protection of local self-government

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

158. In Ireland a possible remedy exists, but is not known to have been used in practice. Very seldom does a local authority challenge an act of a higher authority (or a national law) in court.

159. The Constitution entrusts the power of judicial review to the High Court and the Supreme Court. Article 34.3.2 of the Constitution states that:

“Save as otherwise provided by this Article, the jurisdiction of the High Court shall extend to the question of the validity of any law having regard to the provisions of this Constitution, and no such question shall be raised (whether by pleading, argument or otherwise) in any Court established under this or any other Article of this Constitution other than the High Court or the Supreme Court.”

160. Therefore, a local authority could challenge the constitutionality of legislation enacted by the *Oireachtas* in accordance with Article 34.3.2, but it is highly unlikely to do so. It could also seek judicial review of the actions of a higher authority such as a Government Minister if, for example, it was alleged that the Minister breached fair procedures in making a decision.

Article 12 – Undertakings – reservations 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.

161. The Charter was ratified in *Dáil Éireann* on 20 March, 2002 and the instrument of ratification (with declarations) was deposited by Ireland on 14 May 2002, the treaty entering into force in Ireland

on the 1 September 2002. The declaration attached to the ratification instrument stated that “Ireland considers itself bound by all the paragraphs of Part I of the Charter” (the substantive provisions of the Charter) and that “Ireland intends to confine the scope of the Charter to the following categories of authorities: county councils, city councils, town councils.”

162. The Congress outlined its understanding of the position of dualist States, including Ireland, in relation to the Charter in a memorandum at the 21st Session of the Chamber of Local Authorities on 28 September 2011. It accepts that Ireland is a dualist state and that the Charter does not have direct effect and consequently a direct application in domestic law without a further legal instrument.

163. It stated this of the Charter’s binding effect:

“32. The Charter was conceived as an instrument with binding effects, entailing commitments under international law (and not domestic law). Countries signing and ratifying the Charter undertake to abide by it in that they will not only refrain from future adoption of domestic law provisions at variance with the Charter, but also amend any provisions which conflict with the Charter.

164. In the opinion of the rapporteurs, the expected commitment of Ireland to adopt all the principles expressed in the Charter into domestic legislation was partly reflected by the contents of the LGA 2001, but no further effort was made to harmonise or amend all the provisions of national legislation which conflict with the Charter after 2001. The rapporteurs maintain that there is no direct “conflict” between Irish legislation and the provisions of the Charter, although several important gaps exist in the legislation.

165. The rapporteurs welcome the publication of the Policy Paper “Putting People First” in October 2012. This document re-invents, so to speak, issues of local democracy in Ireland after more than a decade of non-realised proclamations (all the important points of this Policy Paper are discussed in topical parts of the report). A major programme of local government legislation is expected to proceed in 2013 to provide for the extensive reforms set out in the Action Programme. Assuming that legislative proposals will be adopted by the Parliament, the reflection of the spirit of the Charter in Irish public policy is expected to improve.

166. Some of the recommendations dating back to 2001 are still valid: Local authorities in Ireland still cannot be said to “regulate and manage a substantial share of public affairs”; the principle of subsidiarity is still not a primary concern in the allocation of public responsibilities. Local authorities’ discretion is still highly circumscribed through the use of statutory instruments and regulations to supplement laws, and the need to secure sanctions and prior approvals from national government for many activities. Consultation of local authorities over new legislation or financial decisions is not systematic. Local authorities are not provided with adequate or sufficiently diversified resources which are commensurate with the responsibilities of local government. Specific or earmarked grants still make up a significant proportion of central government transfers.

167. The rapporteurs had the opportunity to discuss with Minister Hogan the possibility of the signing and ratification of various Council of Europe legal instruments related to local democracy such as 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 Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159), and the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144).

168. They were informed that, it is intended to give consideration to the issue of 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 as soon as possible in the context of implementation of the Action Programme. As regards the signature of the Convention on the Participation of Foreigners in Public Life at Local Level, the rapporteurs were given to understand that providing separate rights and arrangements for new-comers would run contrary to Ireland’s national policy, which is consistent with the European Common Basic Principles of Integration (established by the Council of the EU and the Governments of the Member States in 2005). Consequently, no development is to be expected on this particular point.

5. CONCLUSIONS

169. The rapporteurs welcome the important changes accomplished by the Republic of Ireland since the last monitoring mission (especially the adoption of the Local Government Act in 2001). There is a will to move from an almost fully centralised system to a certain level of decentralisation, even if, because of historical and political reasons, decentralisation reforms are difficult to propose and to implement. The Action Programme adopted in October 2012 provides a clear commitment on the part of the Government to expand the local government's role. It is a comprehensive effort with the potential for far reaching consequences.

170. It is also noteworthy that the local authorities in Ireland, in spite of various structural and financial issues, have a strong connection to their citizens and deliver services adequately.

171. The basic legal framework is now established for local and partly also for regional authorities; however in the rapporteurs' opinion, it is difficult to say that it is fully in conformity with the Charter. Some principles of the Charter are insufficiently respected from both *de iure* and/or *de facto* perspectives. The importance of the principle of subsidiarity is not properly reflected in the legislation. The rapporteurs encourage the Government to revise their legislation in order to ensure that the subsidiarity principle is better enshrined and protected in the law and to promote this crucial principle in practice in the Irish public administration system.

172. The constitutional protection of local self-government is rather weak. The Constitution recognises the role of local government but limits its action to powers and functions conferred by law. As regards the scope of local self-government, this is contrary to the principle of full discretion to exercise initiatives with regard to any matter which is not excluded from local competence. Formally it is still valid that local councils can only exercise the powers and responsibilities that they are permitted to do in the law. The position of the public servant known as a City or County Manager is ambiguous in relation to the elected representatives.

173. As regards the scale and structure of the powers and responsibilities of local and regional authorities, local authorities are still waiting for a strong decentralisation effort involving the delegation of relevant competences and financial independence to the local and, also, the regional level.

174. The Action Programme, although it praises decentralisation in spirit, does not provide massive concrete steps in that direction. The rapporteurs are concerned that some of the actual steps proposed may go in the opposite direction (centralisation of water management for example). The Action Programme provides for the assignment of some significant additional functions to local government, particularly in the form of local enterprise, community/local development and economic development, but the devolvement of other typical local government services is only a long term goal in its text.

175. The Action Programme contains a clear commitment to more far-reaching expansion of the role of local government in the future. According to the Government, it provides a realistic pathway to achieving this, but the Government also recognises the difficulty involved in this regard. However, not all other stakeholders are of the same opinion: local government representatives feel that they are prepared for a higher level of responsibility.

176. The rapporteurs are also concerned that consultations with local authorities and their associations are not systematic or sufficiently regulated to allow the latter to make an input into the proposed reform. Mechanisms of consultation with local and regional authorities on matters concerning them directly should be further developed both in legislation and, especially, from a practical implementation perspective with clear rules in line with the "due time" and "appropriate way" provisions of Article 4 para.6 of the Charter.

177. The limited cooperation between and different views defended by the relevant local and regional government associations do not positively contribute to ensure a high level of autonomy within the limits of the law for municipalities and regions. The rapporteurs invite the local authorities to discuss the merits of setting up a procedure or body that will unite all their representative associations under one roof so that they can develop strategies and defend their common interests. The merger of associations proposed by the Action Programme is very encouraging in this regard.

178. The conditions of office of local elected representatives are insufficiently regulated by general legislation (Labour Code). This situation makes participation of certain social groups (especially private sector employees) in the councils difficult.

179. Administrative supervision of local authority activities by the central level remains extremely high and, under this system, it is difficult to state that powers given to local authorities are full and exclusive. The Action Programme is expected to lead to further relaxation in this regard. However, the excessive oversight and regulation of local government actions and especially low trust in their managerial capacities should be addressed by all actors more effectively.

180. It seems to the rapporteurs that the core actors of the local government system do not have sufficient information database to verify whether local financial resources are adequate and commensurate with the scale and scope of their responsibilities. The central government realised several extensive evaluations of the financial situation in recent years (like the Special Group on Public Service Numbers and Expenditure Programmes findings, the report of the Commission on Taxation, which considered inter alia the sources of funding for local authorities, the Local Government Expenditure Review). However, all the data obtained failed to bring the positions of the Government and local authorities concerning the adequacy of funding close enough.

181. The scale of real local taxes and the freedom to set their rates appear to be very limited. During the economic crisis, the financial resources of local governments have decreased, but the volume of their responsibilities has remained the same. The current cuts have seriously limited the capacity of local governments to deliver the needed scale and quality in local public services. The right of local governments to borrow is considerably restricted.

182. The equalisation mechanism is not transparent. Local governments have the formal freedom to adopt budgets in the most preferable way but such freedom is severely limited in practice. The local finance officers, with whom the rapporteurs had the opportunity to discuss the issue, claimed that more than 90 % of their expenditure was composed of pre-determined items.

183. As regards the regions, the rapporteurs would encourage the Irish Government to consider opening the debate on further developing the regional tier of government, with the possibility of putting in place a system of direct election of representatives and real responsibilities in delivery of "regional" public services.

184. Finally, the rapporteurs would welcome the signing of the Additional Protocol to the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities (ETS No. 159), 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 Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144), as a very positive step towards the fulfilment of the countries' obligations under the Charter.

Appendix 1 – Information on the implementation of human rights at local and regional level

Participation: Citizen Involvement in decision making and elections

1. During several meetings with the rapporteurs, interlocutors came up with similar expressions to describe the level of citizen involvement in local matters, saying that the Irish participate only when their private interests are influenced by actions of public bodies (“not in my backyard principle”).
2. Existing analytical studies indicate that there is much truth behind this statement. For example the Barrington report stated in 1991 that, in Ireland, there is limited scope for public involvement. In recent years several statutory tools for direct citizen involvement have come to the fore, especially consultations in areas of urban planning and infrastructure developments. In many cases, specific civic initiatives are formed to lobby for or against planning decisions.
3. On the other hand instruments like local referenda are really uncommon. The participation of citizens at local elections is below the turnover at national level elections. During the visit, some interlocutors indicated that citizens sometimes prefer to contact their TDs and not the local elected councillors – mainly because they know that most decisions are taken centrally and clientelism appears to be part of the political culture.
4. The specific forms of participation at the local government level are:
 - i) The “Strategic Policy Committees”. Not less than one-third of the members of these committees are drawn from various sectors relevant to the work of the committees (e.g. representatives from the agricultural, business, the trade union and community and voluntary sectors). These committees have to be established for all major policy areas at local level. The final decision however, is ultimately a Council responsibility.
 - ii) The “City and County Development Boards”. Their role is to coordinate the delivery of local public services.
 - iii) Community and voluntary forums, where especially NGOs in the given area participate. Forums are used to nominate members for SPCs and Boards. There are also residents’ associations and customer participation initiatives such as the “Your Voice, Your Dublin” were mentioned.
5. Citizen submissions to the Ombudsman are relatively frequent - about 27% of complaints concern local issues. Typical complaints concern developers who breach building permits (local governments are expected to start legal procedures in such cases, but this is rare because of costs and length), housing (including complaints against providing housing to vulnerable groups) and waste management (some cities have decided to fully privatise this service - which may increase the number of complaints in the near future).
6. There is no local petition officer at local government level in Ireland. The Freedom of Information Act is sometimes used by citizens to ask for data and information.
7. According to the DECLG, there are two sides to the coin: On the one hand, in 2007, the Taskforce on Active Citizenship, which was established to consider ways in which people can be encouraged and supported to play active roles as members of their communities and society, recognised that Ireland already has quite an extensive range of local government and local and community development structures and has extensive interaction between local authorities and communities: Attendance by the public and the media at local authority meetings and the availability of the minutes of those meetings; the provision of information on local authority activities, budgets, etc.; the consultation of the public on a range of specific matters such as proposed bylaws; proposed development plans and various projects; the Strategic Policy Committee system; and the Community and Voluntary Forums, which were established in 2000 in each city and county as part of the County/City Development Boards (CDBs) initiative.
8. There are also powers given under the Local Government Act 2001 to deepen the extent of local authority engagement with the local community, including by consulting with local sectoral, community or other groups, or associations; holding information meetings and disseminating information to the

public; ascertaining the views of the local community in relation to matters that affect them, and organising the carrying-out of research, surveys or studies in the community.

9. However, the same Taskforce also found that there was a perceived inability of communities to influence decisions taken by statutory bodies effectively, and a lack of suitably mechanisms to channel civic energy in tackling local needs. Local authorities often feel that the public does not engage to best effect with consultation on strategic policies which set the framework for decision making and only engage at a very late stage when specific decisions are seen to affect the locality. These difficulties are not unique to Ireland. The Taskforce recommended reform in this regard, including decentralisation of decision-making powers and associated reform of revenue-raising capabilities at local level.

10. While existing mechanisms for consulting the public are extensive, it is now considered that further means of engagement by citizens in local authority policy formulation and service design should be considered. The Action Programme includes a number of measures that will facilitate an improved level of engagement, such as the restructuring of local government at sub-county level in a way that will bring local government closer to communities; providing local government with a more meaningful range of powers and make it more relevant to their needs; consideration of additional mechanisms to broaden the engagement with citizens and communities; and the improvement of communication by local authorities with their citizens.

Non-discrimination:

11. There is a diversity of ethnic minorities in Ireland. These include the Traveller community which is expected to be the largest (23,681 according to the 2002 Census), Africans, Asians and people from the Caribbean, the Jewish community (3,000), asylum seekers and refugees. There are also foreigners (especially from the new EU member states) officially employed in Ireland. According to the estimates, about 15 % of people living in Ireland belong to minorities or are foreign citizens.

12. Based on the report of the Ireland Human Rights Commission (IHRC),¹⁵ it is possible to argue that:

- non-discrimination/minorities issues are relatively comprehensively handled by Irish legislation and there are no major gaps visible from a legal point of view (as stated, for example, by UN regular evaluations);
- but there are several implementation gaps. According to the IHRC report, it is important to note that there is no national action plan on human rights or other comprehensive human rights policy, and this lacuna hinders comprehensive consideration of all human rights across all areas of Irish life.

13. The situation of the Traveller community is an issue in Ireland. According to the IHRC, Travellers face high levels of discrimination and continue to be disadvantaged. They continue to have a much shorter life expectancy and poorer educational and health outcomes compared to the general population. They do not have sufficient access to accommodation that reflects their nomadic way of life and they remain unrecognised as an ethnic minority. Cuts in funding to essential services may compound these problems.

14. According to some interlocutors the rapporteurs met, one of the reasons why Travellers' access to accommodation is really restricted in Ireland (in spite of a relatively well functioning system of social housing) is that there are waiting lists for social houses and Travellers frequently move, falling to the bottom of a waiting list again and again. According to these local authorities, special legislation is necessary to cope with this problem.

15. The 2001 report of the National Consultative Committee on Racism and Interculturalism referred to "generalised and emotive statements and comments being made by a small number of councillors in relation to both Travellers and asylum seekers".¹⁶ Apparently, there are indications that some councillors consider it necessary to establish anti-Traveller credentials, or at least be seen as opponents of any measures to meet the accommodation needs of Travellers, for electoral purposes.

¹⁵ http://www.ihrc.ie/download/pdf/ihrc_annual_report_2011.pdf

¹⁶ <http://www.ucd.ie/mcri/resources/PositivePolitics-03pdf.pdf>

16. Ireland has made (following its Universal Periodic Review Hearing in October 2011) commitments to strengthen the rights of Travellers with special focus on access to health care, education, housing, and ensuring greater Traveller participation in decision making processes. The IHRC continues to call on the government to recognise Travellers as a distinct ethnic minority.

17. On the specific issue of Traveller accommodation, which is the main area of local government involvement in relation to Travellers, the following might be noted:

- Traveller accommodation is dealt with within the context of overall comprehensive housing policy and legislation, and through the Housing (Traveller Accommodation) Act 1998 which addresses the special needs of Travellers. Under that Act, each major housing authority is required to draw up, adopt, and implement multi-annual Traveller accommodation programmes, with the aim of accelerating the provision of accommodation for Travellers. In early 2009, local authorities adopted a third round of accommodation programmes which will cover the period 2009 – 2013.
- In accordance with the provisions of the 1998 Act, responsibility for assessment of the accommodation needs of Travellers, the preparation, adoption and implementation of multi-annual Traveller Accommodation Programmes, and the provision of Traveller accommodation rests with individual housing authorities. The role of the Department of the Environment, Community and Local Government is to ensure that there is an adequate legislative and financial system in place to assist the authorities in providing such accommodation.
- Accommodation for Travellers is provided across a range of options. DECLG provides:
 - 100% capital funding for Traveller-specific accommodation (halting sites and Group Housing Schemes;)
 - funding for a range of support services which operate in tandem with the capital programme;
 - funding towards the salary and expenses of social workers employed by local authorities and others working with Travellers and other costs.
- A substantial amount of accommodation was provided for Travellers under the first and second Traveller Accommodation Programmes, and progress is continuing under the third Programme. This has resulted in a significant reduction in the number of Traveller families living on unauthorised sites. An indication of the extent of progress that has been made can be obtained from the fact that in 2011, some 87% of Traveller families were accommodated in housing (whether State assistance or otherwise), compared with around 64% in 2002. During that period the total number of Traveller families increased from 6,289 to 9,535.

18. On the question of ethnic status (which does not come within DECLG's area of responsibility), the Irish Government has taken the view that, while Travellers are clearly an indigenous minority community, there is no firm rationale for specific "ethnic recognition". Travellers have the same civil and political rights as other citizens under the Constitution. The key anti-discrimination measures, the Prohibition of Incitement to Hatred Act, 1989, the Unfair Dismissals Acts 1977, the Employment Equality Acts and the Equal Status Acts specifically identify Travellers by name as a protected group. The Equality Act 2004, which transposed the EU Racial Equality Directive, applied all the protections of that Directive across all of the nine grounds contained in the legislation, including the Traveller community ground. All the protections afforded to ethnic minorities in EU directives and international conventions apply to Travellers because the Irish legislation giving effect to those international instruments explicitly protects Travellers.

19. The situation of other minorities is better, especially from a social rights point of view, but their representation in public life is really limited (for example, the first Muslim member of Senate was elected for the period 1992–97. There are no Muslim local councillors to date).

20. Bilingualism is sometimes an issue. For example, the Irish Language Commissioner (*An Coimisinéir Teanga*) was asked to appear before the parliamentary Joint Committee on Investigations, Oversight and Petitions, when national museums were not fulfilling their obligations under the Official Languages Act 2003, in obstruction of the official policy of bilingualism. In its 2011 report, the Commissioner had noted that 39.5% of the language related complaints concerned local authorities.

Equal opportunity policies (sex and gender; disability, age)

21. The first official report examining the position of women in Irish society was the 1972 Report of the Commission on the Status of Women. This report identified a range of legislative and policy actions required in order to advance the position of Irish women, most of them implemented later on.

22. The UN 2004 report about responses of countries to resolutions of Twenty-Third Special Session of the General Assembly 2000¹⁷ identifies main developments in the period of 1995 - 2004 as follows:

- An increase in women's labour force participation to 55% (for those aged 15-64).
- A narrowing of the gender pay gap from 18% to 15% during the period 1994-2000.
- Among significant mainstream measures to benefit women was the introduction of the Statutory Minimum Wage in 2000.
- There have been improvements in women's representation at management levels. The 2002 Census shows that percentage of women who are employers and managers is 45.8% in the Border, Midland and Western Region and 47% in the Southern and Eastern Region. However, only 3% of CEOs in private companies and 6% of Secretary Generals of Government Departments are women.
- Women now constitute 30% of state board representatives and 36% of Government nominees to these bodies.

23. The proportion of women in bodies at all levels of government is comparable with those of the neighbouring countries, but it is still a matter of concern. After the 2011 elections, there were 25 women in the 166-seat House of Representatives and 15 women in the 60-seat Senate (highest number ever). There is a lot of discussion about this percentage and many actors propose to redress the gender imbalance in Irish public life and to promote the participation of women by introducing gender quotas in the selection of political party candidates.

24. The Electoral (Political Funding) Act 2012 provides for the payment of state funding to political parties being conditional on parties having at least 30% women and 30% men candidates at the next general election. Seven years from the general election where this provision first applies, this will rise to 40%. There are several proposals in the Action Programme to promote gender equality in local government.

25. Disabilities policies are relatively comprehensive in Ireland. For example, all public authorities must have "access" officers, responsible for guaranteeing access to the disabled. Some complaints on this issue have been handled by the Ombudsman, indicating that people are aware about this right.

26. Sexuality issue is relatively a new topic in Ireland – it was in 2011, for example, that a Senator, who identifies herself as lesbian, became the first member of the *Oireachtas* to be in a recognised same-sex relationship. However, some public representatives in Ireland had publicly identified themselves as being homosexual long before 2011.

Combating racism, intolerance and violence against women and children

27. According to the IHRC report, domestic violence remains a serious and pernicious problem in modern Ireland. The State committed itself to take stronger action on it, following its UN Universal Periodic Review (UPR) Hearing. There remained a need to ensure the effective implementation of the National Strategy on Domestic, Sexual and Gender-Based Violence 2010-2014¹⁸, including the implementation of the specific targets and timeframes set out in the Strategy.

28. The Strategy has been drafted by the National Office for the Prevention of Domestic, Sexual and Gender-based Violence, with the assistance of a broad range of partners across the state and non-governmental sectors. Six government departments, their agencies and up to 100 non-governmental organisations (NGOs) are involved in work relevant to the prevention and alleviation of abuse.

¹⁷ <http://www.un.org/womenwatch/daw/Review/responses/IRELAND-English.pdf>

¹⁸ <http://www.cosc.ie/en/COSC/Final%20Electronic%20NS%20full%20doc%203%20March.pdf/Files/Final%20Electronic%20NS%20full%20doc%203%20March.pdf>

29. According to the IHRC report, the current difficult economic circumstances create conditions for increased racist and xenophobic incidents as evidenced elsewhere. However, the full extent of the problem is unclear insofar as there is no independent monitoring of racial incidents, with the closure of the National Consultative Committee on Racism and Interculturalism (NCCRI) being a contributing factor. The IHRC has called on the Government to renew the National Action Plan Against Racism (NAPAR), which came to an end in 2008, or to replace it with a similar programme.

Appendix 2

PROGRAMME OF THE CONGRESS MONITORING VISIT TO IRELAND PART I: Dublin and Cork

3 – 5 October 2012

Congress delegation:

Rapporteurs:

Mr Michael COHEN	Rapporteur on Local Democracy Member of the Monitoring Committee of the Congress Chamber of Local Authorities, SOC ¹⁹ Mayor of Kalkara (Malta)
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Ms Merita JEGENI YILDIZ	Rapporteur on Regional Democracy Member of the Monitoring Committee of the Congress Chamber of Regions, EPP/CCE Councillor, Provincial Council of Ankara (Turkey)
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Expert:

Prof. Juraj NEMEC	Consultant Member of the Group of Independent Experts of the Congress on the European Charter of Local Self-Government (Slovak Republic)
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Congress Secretariat:

Ms Sedef CANKOÇAK	Co-Secretary of the Monitoring Committee of the Congress
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¹⁹ EPP/CCE: European People's Party Group in the Congress
SOC: Socialist Group of the Congress

Wednesday, 3 October 2012

National Delegation to the Congress

Mr William CAREY, Head of the Irish Delegation to the Congress, Councillor, Meath County Council

Ms Sinead GUCKIAN, Councillor, Leitrim Council
Ms Mary HEGARTY, Councillor, Bantry Town Council
Mr Des HURLY, Councillor, Carlow Town Council
Mr Vincent McHUGH, Councillor, Trim Town Council
Mr Michael O'BRIEN, Councillor, Kilkenny County Council
Ms Pádraigin Uí Mhurchadha, Councillor, Monaghan Town Council
Ms Phyll BUGLER, Councillor, North Tipperary County Council
Ms Deirdre HEALY MCGOWAN, Councillor, Sligo County Council
Mr Jan ROTTE, Councillor, Lismore Town Council

Mr Liam KENNY, Secretary of Delegation, Association of County & City Councils Office

Association of County and City Councils of Ireland

Cllr Hilary QUINLAN, New President
Mr Michael O'BRIEN, Past President
Cllr Peter MCVITTY, Vice President

Association of Municipal Authorities of Ireland

Mr Ted HOWLIN, President
Mr Tom RYAN, Director
Mr Mark DALTON
Mr Nicolas CROSS

Association of Irish Regions

Cllr. Tomas BREATHNACH, President of the Association of Irish Regions
Mr John BYRNE, Director of the Mid-East Regional Authority
Mr Stephen BLAIR, Director, Southern and Eastern Regional Assembly
Mr Jim CONWAY, Director of Dublin Regional Authority

Local Authority Members Association (LAMA)

Mr Hugh MCELVANEY, President
Mr Noel BOURKE, General Secretary

Specialists on issues of local government

Dr Mark CALLANAN, Lecturer, Institute of Public Administration
Dr Brid QUINN, Lecturer, Department of Politics & Public Administration, University of Limerick

Committees of the *Oireachtas* (parliament) on Environment, Culture & the *Gaeltacht*, on Finance, Public Expenditure & Reform and on Investigations, Oversight & Petitions

• Deputies:

Mr Kevin HUMPHREYS, Mr Ciarán LYNCH, Ms Catherine MURPHY, Mr Arthur SPRING, Mr Peter MATHEWS, Mr Brian STANLEY, Mr Michael MCCARTHY, and Mr Peter MATHEWS

• Senators:

Mr Cáit KEANE, Mr Aideen HAYDEN, Mr Trevor O'CLOCHARTAIGH and Mr Jimmy HARTE

Office of the Ombudsperson

Ms Bernadette MCNALLY, Director General
Mr Tom MORGAN, Senior Investigator

Thursday, 4 October 2012

Department for the Environment, Community and Local Government

Mr Phil HOGAN, Minister for the Environment, Community and Local Government
 Ms Geraldine TALLON, Secretary General
 Mr Des DOWLING, Assistant Secretary of Local Government Division
 Mr Denis CONLAN, Principal Officer, Local Government Development

Department for Public Expenditure and Reform, Department of Public Expenditure

Ms Deirdre HANLON, Assistant Secretary, Expenditure Policy Evaluation and Management
 Mr Paul REID, Assistant Secretary, Public Service Reform and Delivery
 Ms Marie McLOUGHLIN, Principal, Environment, Community and Local Government Vote
 Mr Andrew CONLAN

Meath County Council and Trim Town Council

Ms Niamh McGOWAN, Chairperson of County Meath Council
 Mr James O'SHEA, Vice Chair of Trim Town Council
 Mr Shane CASSELS, Councillor
 Mr William CAREY, Councillor and Head of Irish Delegation to the Congress
 Mr Brendan McGRATH, County Manager
 Mr Ger MURPHY, Meeting Administrator
 Ms Fiona LAWLESS, Head of Finance, Meath County

Supreme Court of Ireland

Mrs Susan DENHAM, Chief Justice
 Mr Gerard HOGAN, High Court Judge

Local Government Audit Services

Mr Noel O'CONNELL, Director
 Mr Richard MURPHY, Principal Local Government Auditor

Friday, 5 October 2012

Dublin City and County Councillors

Mr Noaise O MUIRI, Lord Mayor of Dublin
 Ms Mary FREEHILL, Chair of the Economic Development, Planning & International Affairs Strategic Policy Committee
 Ms Mary O'SHEA, Chair of the Environment & Engineering Strategic Policy Committee
 Mr Dermot LACEY, Chair of the Housing, Social & Community Affairs Strategic Policy Committee
 Mr John TIERNEY, Chief Executive
 Mr Vincent NORTON, Executive Manager (Director), City Managers & Corporate Services Department
 Mr Peter FINNEGAN, Director, Economic Development, International Relations & Research Department
 Mr Michael SANDS, Deputy Director, International Relations & Research Department

Cork City and County Councillors

Ms Barbara MURRAY, Mayor of Cork County Council
 Mr John BUTTIMER, Lord Mayor of Cork
 Members of the Cork County Council
 Members of the Cork City Council
 Louis DUFFY, Director

Appendix 3

**PROGRAMME OF THE CONGRESS MONITORING VISIT TO IRELAND
Part II: Dublin**

3 May 2013

Congress delegation:

Rapporteurs:

Mr Michael COHEN
Co-rapporteur on local democracy
Member of the Monitoring Committee of the Congress
Chamber of Local Authorities, SOC²⁰
Mayor of Kalkara (Malta)

Ms Merita JEGENI YILDIZ
Co-rapporteur on regional democracy
Member of the Monitoring Committee of the Congress
Chamber of Regions, EPP/CCE
Councillor, Provincial Council of Ankara (Turkey)

Expert:

Prof. Juraj NEMEC
Consultant
Member of the Group of Independent Experts of the Congress
on the European Charter of Local Self-Government
(Slovak Republic)

Congress Secretariat:

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

²⁰ EPP/CCE: European People's Party Group in the Congress
SOC: Socialist Group of the Congress

Friday, 3 May 2013

Association of Municipal Authorities of Ireland (AMAI)

Mr Willie CALLAGHAN, President
Mr Tom RYAN, Director

Association of County and City Councils of Ireland (ACCC)

Cllr Hilary QUINLAN, President
Cllr Peter MCVITTY, Vice President

Association of Irish Regions

Cllr Tomas BREATHNACH, Chairperson, Association of Irish Regions
Mr Liam CONNEALLY, Honorary Secretary
Mr Jim CONWAY, Director, Dublin Regional Authority

Department for the Environment, Community and Local Government

Mr Phil HOGAN, Minister for the Environment, Community and Local Government
Mr Denis CONLAN, Local Government Development Section
Ms Emma REEVES (Local Government Finance Section)
Mr Colm DOWNEY (Local Government Development Section)
Mr Sean O'SULLAOEBHAIN, Local Government Development Section

County and City Managers' Association (CCMA) /Local Government Management Agency

Mr Daniel MCLOUGHLIN, Vice-Chair of CCMA, Westmeath County Manager
Mr Philip MAGUIRE, Dublin City Manager
Mr Ronan MURPHY, Office for Local Authority Management

National Delegation to the Congress

Mr Michael O'BRIEN, Head of the Irish Delegation to the Congress