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**ASSIGNING COMPETENCES AND FUNCTIONS TO LOCAL
SELF-GOVERNMENT IN FOUR EU MEMBER STATES:
A COMPARATIVE REVIEW**

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Executive Summary

The main conclusions of this paper, which are also its main recommendations to be found at the end of it, are that the Local Statute should include four key elements:

1. A **general competence clause**, even though such a clause would not strictly be necessary if the appropriate Article of the European Charter on Local Self-Government (ECLSG) has been ratified and incorporated into domestic law. The general competence clause should be accompanied by principles and a detailed list of competences (see below).
2. **The principles** under which competences and functions will be performed by the local level of government. At minimum, the following principles and their definitions should be included: self-government, proportionality, subsidiarity, diversity and flexibility. For some principles (*e.g.* flexibility), the local statute should specify considerations under which a municipality is able or unable to deliver a service, in order to protect both the principle of self-government and the needs of citizens.
3. **Clear descriptions about the competences granted to local authorities.** The statute should specify, at minimum, the following competences, either in a general Article or in Articles related to each field of activity: designing, planning and standard setting, regulating, delivering, contracting, controlling and financing.
4. **A list of services** for which access is universal and citizens are entitled to their provision, noting that some services (*e.g.* drug addiction programmes) are targeted to specific groups and universal entitlements do not apply.

In earlier stages of the decentralisation process, the central government should be prepared to strengthen the role of upper tiers of local authorities (provinces, etc.) until municipalities gain sufficient capacity to provide or produce local services. If a country is designing a system of local delivery of services, it could consider leaving supra-municipal and remaining competences to the upper tier of local authorities, *i.e.* replacing or supporting municipalities that cannot deliver services of universal access or legally mandated services.

All the above measures are meant to grant and reinforce local self-government. Local self-government implies that local statute should grant local authorities with the power to manage their personnel, their financial resources (patrimony, debt, savings, etc.) and organisational structure, and to regulate their relationships with third parties (citizens, welfare and sport associations, enterprises, etc.).

In addition, self-government implies financial autonomy. This can only be achieved if services produced or provided by municipalities are financed from their own taxes and from non-conditional grants. Whenever possible, non-conditional grants should replace earmarked grants. Local statute should stipulate that any sectoral law that transfers functions and/or competences to local authorities should ensure that appropriate financial and human resources are also transferred to local level.

Local authorities should strengthen national associations of municipalities in order to negotiate with national government under which conditions the transfer of competences and/or functions should be accomplished.

Introduction

This report was prepared upon request of the Ministry of the Interior of the Czech Republic. The paper analyses the challenges posed by the transfer of functions and competences from higher levels of government to local authorities in four EU Member States, namely France, Germany, Portugal and Spain. The functions performed by local authorities are fairly similar in the four selected EU countries. These countries have been chosen on the grounds that they have large numbers of small-size municipalities that deliver similar services at local level, a feature deemed to compare well with the Czech local system¹. Furthermore, these four countries share common problems in trying to preserve their autonomy in the face of higher levels of government.

The paper is divided in four sections. Functions, competences and related concepts are defined in the first section. The second section examines the distribution of functions in the four selected countries. The regulations and directives of the European Union and the Council of Europe regarding the distribution of functions and competences are analysed in the third section. The final section establishes principles and recommendations for decentralising competences and services to local authorities.

The distribution of functions and responsibilities across levels of government is dynamic, evolving as new social or political necessities emerge. In addition, political and administrative systems are always adapting to new demands. There is a continuous rearrangement of competences as sectoral legislation poses new requirements on local authorities, and more generally, as higher levels of government regulate spheres in which municipalities have local interests at stake.

It is impossible to obtain a static picture of this evolution. Likewise, it is almost impossible to draft a local statute or Act of Parliament on decentralisation that freezes, once and for ever, the distribution of functions and responsibilities among levels of government: the issue is dynamic by definition. The challenge, then, is how best to embed the evolving citizens' demands – and the responses given by public authorities – within the legal system. The way in which competences and functions are structured and organised affects not only what municipalities do, but also how well each level of government – and the public sector as a whole – actually responds to citizens' needs and by designing and implementing concomitant policies.

There are some constraints in the way in which functions and responsibilities are shared by the various levels of government. The distribution of responsibilities over functions varies according to several factors, among them the degree of centralisation within a particular national system. In some countries, local authorities have full responsibility for the delivery of specific services and can even discharge services (along with full responsibility) not explicitly assigned to higher levels of government. In other countries, the full responsibility for a function or service lies at central government level while municipalities are at arm's length and merely implement, under various forms of delegation, services decided at and designed by the centre.

Size constitutes a limit to the capacity of local authorities to deliver services. Local authorities above a certain size represent the community and deliver some minimum services: they perform a representative and delivery role. However, when size is inadequate, local authorities cannot discharge basic services. For proper service delivery, they can decide, in order to achieve economies of scale, to: merge with neighbours; join other municipalities in associations; or give up powers to an upper-tier local authority. In these cases, local authorities may perform almost exclusively a representative role, as they not always are able to directly translate citizens' preferences into correlating service delivery.

The decentralisation of functions and competences from higher to lower levels of government raises several important questions for decision-makers:

¹ See Chapter 3 (*Territorial Governance in Flux*) of the "OECD Territorial Reviews. Czech Republic", OECD Publishing, Paris, 2004

- Is there any conceptual framework that might provide guidance in allocating functions and competences to different levels of government?
- What services have been assigned to different levels of government in other countries - and under which principles?
- What, if any, is the role of the European Union or the Council of Europe regarding the distribution of functions and competences?
- What competences should local authorities have over mandated functions and over those services that municipalities perform voluntarily, under the general clause competence?

These questions represent the core issues to be addressed by this policy paper. By answering these questions, the paper will take into account three levels of analysis (Kiser and Ostrom, 1982): a) operational level – the legal structure of local ordinances; b) collective action level - sectoral legislation enacted by the federal and/or regional level of government; and c) constitutional-choice level – local statute and Constitution. The recommendations in this paper are confined to the constitutional and collective choice level of analysis. They do not address the operational level.

All of these questions will be addressed in the subsequent sections of this report. In the first section, the terms functions and competences will be defined and detailed. Section two presents four theoretical frameworks to distribute competences. Section three is devoted to the principles that underlie the distribution of competences in four European countries: France, Germany, Portugal and Spain. In the fourth section, the European dimension of the topic will be highlighted as a means of examining the principles and directives that affect the distribution of competences between national levels of government. Finally, the last section offers some recommendations based on the European principles of local self-government that should underpin the distribution of competences among levels of government.

I Defining the Terms: Functions and Competences, Provision and Production. Theories

Two sets of concepts will be used throughout this paper: functions and competences. *Functions* refer to what governments do or to the fields of activities in which they play a *de facto* role. In common language, government function is implicitly associated with services and policies in a narrow sense (education, health, urban transport, etc.). Functions actually performed may or may not coincide with those assigned by legislation; many local authorities discharge more services than are specifically mandated.

Competences refer to responsibilities and powers, formally bestowed by law, with which public authorities are entrusted in each field of activity. To illustrate, this may refer to whether governments regulate, deliver, evaluate, finance, monitor, sanction or intervene in the way in which functions and services are discharged. Competence is a concept associated with countries of Napoleonic tradition such as France, Italy, Portugal and Spain. In Anglo Saxon countries, the preferred term is ‘responsibilities’. Some authors equate the concept *instrument* to competences. For the purposes of this paper, competences will be used to focus on the formal power to act on a particular matter in a particular way. In this text, the term competence will be preferred, primarily because it is used in the chosen countries – all of which operate within the continental European tradition.

Various typologies can be used to classify competences. This paper will apply two of them, which have intersecting features. A first typology broadly distinguishes between provision and production. *Provision* is the responsibility for the existence of the service to which citizens are entitled; *production* is the actual delivery or discharge of the service. Public provision implies that the responsibility is assigned to a public authority, while production could be undertaken “in-house” as well as by a private enterprise, another public organisation or a non-governmental body. In all of these cases, the responsibility acquired by a public authority *vis-à-vis* the citizens remains intact.

A second typology further disaggregates *provision* and *production* in various competences: designing, planning and standard setting, regulating, delivering, contracting, controlling and financing.

a) *Designing, planning and standard setting*: These terms refer to the capacity of deciding the rules that determine the logistics of a service (*i.e.* answering the questions of what, who, when and how?).

b) *Regulating* has both a specific and a broad meaning. In the narrow sense, regulation refers to the rules that foster competition of economic and social activities and protect consumers. In this case, the coercive power of government is used to allow or prohibit certain activities, and to protect businesses from non-competitive practices. Broadly speaking, regulation refers to any authoritative decision, not only legislation.

According to Kiser and Ostrom (1982), it is useful to distinguish three levels of rules – operational, collective choice and constitutional. As each layer of governmental activity involves prescribing, monitoring, applying, and enforcing rules, these levels cumulatively and hierarchically affect the actions taken and the outcomes produced by any government setting. This framework is used in order to focus the discussion about the distribution of functions and competences within the legal structure of: local ordinances (operational level); sectoral legislation from central, federal and/or regional levels of government (collective choice action level); and Constitution through ordinary law or local statute (constitutional level).

- *Operational rules* directly affect day-to-day decisions made by the participants in any governing setting. They comprise, for example, local ordinances affecting numerous basic services that influence the quality of life for citizens. In this context, they are also called local ordinances and regulations.
- *Collective-choice rules* affect operational activities and results via their effects in determining who is eligible and the specific rules to be used in changing operational rules. Regarding local affairs, collective-choice rules might be rules of regional-state level of government or sectoral legislation that affect the way in which local functions are performed, as well as the competences that municipalities may exert in their everyday operations. Collective-choice rules also set limits on local regulations to ensure that they do not trespass provisions of sectoral legislation.
- *Constitutional-choice rules* affect the set of collective-choice rules (which, in turn, affect the set of operational rules). For the purposes of this document, these rules include the Constitution and local statutes (*i.e.* laws passed by parliaments), which in some countries might have a rather high formal ranking because they may require a given qualified majority for approval. The Constitution and/or local statutes may also establish links between collective-choice rules (sectoral legislation) and operational rules (local ordinances).

c) *Delivering* refers to the actual management of the service. The service may either be managed by ‘in-house’ staff, or outsourced through a contract (*contracting out*). If the discharge of the service is undertaken by an outside firm or organisation, the contract sets out: the conditions under which the contractor will deliver the service; the standards and regulations that apply; how the service will be evaluated; and what sanctions will punish non-compliance with regulations and standards.

d) *Controlling* the production of the service is a competence that encompasses several activities: monitoring, evaluating, inspecting and sanctioning. These activities relate to whether the service or the function is carried out as intended from various points of view: legality, efficiency, effectiveness, equity, achievement of outcomes, etc. A public authority’s responsibility for controlling is not waived when the service is contracted out. In some cases, such as infrastructure building and maintenance, the controlling function might also be subcontracted with a private enterprise (*e.g.* it is not uncommon nowadays to find that a private firm builds a road and another firm monitors and controls the compliance with the contract). Regardless, the public authorities are still ultimately accountable for the service (*i.e.* providing infrastructure for transportation).

e) *Financing*: Financial support from governments takes different forms, the most typical include: totally covering the costs of the service through the budget; subsidising certain groups of users; awarding grants; or offering loans at below-market rates.

A “full exercise” of these activities means that a local authority is to be able to exercise them without interference from higher levels of government. This power is not infinite because the exercise of those competences (operational rules) is framed by rules of the collective choice and constitutional levels. For instance, financial autonomy (without interference from higher level authority) implies that a public authority has taxation powers, or can impose user charges or has access to unconditional grants. Conditional grants are inimical to financial autonomy.

The “*responsibility*” of local authorities refers to the provision of the services, *i.e.* making services available to citizens. In many ways, local authorities seem to have evolved from “service producers” to fulfilling rather more of a “provider” role. Some authors use the label “enablers” for local authorities in some systems. Cochrane (1993: 70) develops the *enabling* authority argument by contending that local authorities should have responsibilities as *enablers* rather than as direct service producers. This author celebrates the widening gap between production and provision of a service “...because this allows the development of a strong and coherent central political/professional leadership, based around a central core of strategic planners and regulators”. However, the full responsibility for the service still remains with the local authority, even when the service is contracted out to a third party.

The *enabling* role creates demand for more regulatory powers for local government, rather than additional service responsibilities. It underlines the label of “government” for a local authority as opposed to just being part of an administrative system that delivers welfare and other services. Finally, the enabling role implies having access to many different forms of intervention, in which direct delivery would neither have a privileged position, nor would it be ruled out. Some conceptual frameworks and policy developments favour the enabling role, as is demonstrated below.

The ECLSG states in its Article 3 that “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.” (Italics added). The key question, for the purposes of this section, is that of *their own responsibility*. This is linked to the idea of full exercise of competences at a given level of government, *i.e.* the whole set of activities (design, standard setting, regulation, delivery, contracting, controlling and financing) should be exercised in the same level of government in order to ensure that the public authority is responsible for the results and is accountable to the citizens. However, *collective choice or constitutional* rules may influence or interfere with local responsibilities. For instance, European legislation affects the way in which service financing is exercised. Public authorities are not allowed to give state aid to certain services (see below). Higher levels of governments try to interfere with local autonomy through sector legislation and conditional grants. In order to understand how the principle of local self-government has been implemented in different countries, it is useful to explore theoretical backgrounds that explain and prescribe how functions and responsibilities may be apportioned. This analysis is undertaken in the next section.

Political science and related disciplines such as economics, sociology and history have found a number of theoretical justifications – with or without cogent empirical evidence – for assigning competences across different levels of government within a national setting. These can be applied within a national setting and also to a supra-national governing structure such as the European Union. While it would be rare that a central government is in charge of trash collection within a municipality (if only because the service implementation requires local knowledge), it is often difficult to identify a clear level of government to which a given service should indisputably be assigned for design, delivery and monitoring. Theoretical justifications from various perspectives try to be convincing on a best way to allocate functions and competences. However, these justifications, in and of themselves, seldom explain how functions and competences are actually distributed. At best, they can partially give account of the distribution; in practice, a mixture of justifications is needed to understand how governments share responsibilities. Four basic arguments are used to justify how functions and competences should be apportioned: economic efficiency; public choice; sense of community; and institutional and political accounts.

1. Economic Efficiency

This criterion focuses on producing services at the lowest possible cost, according to economies of scale and distribution. It is often used for assigning responsibilities for services such as electricity and water supply, sewage and waste processing systems. In these services, a large portion of total service costs are associated with distribution costs, as well as with the need to have large sums of initial capital investment immobilised for years and amortised over the long term.

Until late 1970s the dominant assumption in local public sector organisation (in the United States and elsewhere) was that big is better; the notion of economies of scale overshadowed everything else. As a consequence, decentralisation and fragmentation were viewed as inefficient, ineffective and unresponsive, as well as being a threat to democracy (see all reports of that decade by the American Commission on Intergovernmental Relations - ACIR).

According to Stein (1990), findings based on empirical evidence challenge the myth that larger centralised institutions were always more efficient, effective and equitable at providing goods and services. In fact, more recent evidence suggests that smaller, decentralised units of government produce more effective and equitably distributed goods and services, and do so more efficiently than larger and more centralised municipal governments. Stein argues further that few scholars or practitioners still advocate the consolidation of municipal governments into a single governance structure. However, some countries have fostered (Denmark) or mandated (United Kingdom) amalgamation of local authorities in order to form larger units of government, based on the argument that larger size is more efficient for the delivery of local services.

This criterion has not been applied in a consistent way, largely because political preferences may – and usually do – run counter to economic efficiency, for two reasons. First, each service has a different technically efficient size of population or area to be served. According to technical principles, it is difficult to find a perfect match between service activities and political-administrative boundaries. Not surprisingly, hospitals, gas, electricity, telephone, sewerage, fire fighting and water systems have different efficiency boundaries in economic terms. Externalities and spill-over effects that stem from this fact are usually addressed through intergovernmental agreements and partnerships. Second, technical capability and economic efficiency are constantly changing criteria, which depend on the evolution of scientific and technical discoveries. Although this state of constant evolution is difficult to capture through rules, it nonetheless proves to be a relevant starting point in defining boundaries and assigning competences for services to different levels of government.

2. Public Choice

The underlying argument for rational (or public) choice theory is that public goods or services may be apportioned to different levels of government with the primary goal of promoting choice for users. Choice also lies at the heart of an economic argument of competition. The key argument is that the most competitive units will offer the best services at the lowest cost, which will imply fewer taxes for public services. Consumers may increase their benefit if decisions about the administration of a public good or service are assigned to a local level, rather than to the regional or national levels, because it is easier to achieve competition between smaller units than between large units.

The rational (public) choice-based explanation has been used in different guises. It especially illuminates the transitions from “big” government to down-sized government through privatisation and outsourcing, as well as from the idea of “government” to that of “governance”. The driving force for reform in this theory is the *micro* perspective of individual, rationally informed, choice of better services. Such choice can only be exerted if monopolies are broken, if small units compete against each other in order to deliver services at the best value for money, or if societal units (non-governmental organisations - NGOs, associations, citizens groups, etc.) can respond to community preferences in the delivery of a service.

Public choice theory drove the reform movements of the American and British governments in the 1980s, both of which included moves towards splitting up the roles of producing and providing. The economic argument advocates larger units that increase efficiency of the public budget. The public

choice argument runs counter and contends that splitting provision-production roles is of benefit for citizens: it increases choice while also reducing costs for government.

This approach is, however, more appealing in theory than it is in practice, for several reasons. An examination of how services are distributed across levels of government in Europe shows that, except perhaps in the UK, the consumer preferences criterion has not been the main driving force in the apportioning of services between levels of government. One of the shortcomings of public choice theory is that no government starts with a clean slate when distributing functions according to various rational arguments. In addition, one comes up against very different rationales when looking at an issue from various perspectives. The choice of school by parents and pupils, which is made possible by public choice theory, goes against the ideal of equality of educational conditions and results across a territory.

Despite these factors, the rational choice approach should not be dismissed altogether as a prescriptive criterion. It has informed – and continues to do so – the way in which governments consider distributing tasks across levels of government. However, it does appear that public choice theory is more powerful as a means of explaining certain trends than as a prescriptive tool.

3. *Sense of Belonging to a Community*

This argument underscores the participative and representative role of local authorities. No matter how small their municipalities, citizens prefer to elect their representatives – the men and women who are responsible for the community's diverse needs and demands. Small communities have customary practices and ways of managing common affairs. Their traditions are typically a carry-over from rural times when forest, water resources, fisheries and pastures were common resources – and the management of these resources was decided upon by the community (Ostrom 1990). With the introduction of democratic practices and local elections, and the industrialization of societies, local residents have started to elect their representatives and have also left aside some customary practices of managing natural resources. At the same time, community participation in managing other affairs still remains in certain practices (organisation of fairs, neighbourhood watch programmes, etc.).

The closeness and the participation of the community, either by itself or through its representatives, in local affairs is impracticable for making decisions associated with many services that require economies of scale. Maintaining the representative and participative role of the small communities actually jeopardises access to some services because the local resources of small municipalities do not match actual needs. This creates a situation in which citizens demand more services but, at the same time, are unwilling to give up power to higher levels of government or to amalgamate local authorities. Countries that are unable to persuade small local authorities to amalgamate need to find various means to overcome the dilemma of separating representation and service delivery.

In the 1990s, the introduction of public choice was also used to justify the appearance of community arguments as the driving force for apportioning functions. According to John (2001: 22), a wide array of factors led to a situation in which services are designed flexibly but functions and competences are distributed in a blurry fashion among different levels of government, as well as private and public organisations. These factors include: rapid economic change; fiscal austerity; social structure change through immigration and ageing society; more sophisticated demands of citizens; increased involvement of NGOs in service delivery; and the appearance of networks as a co-ordinating mechanism for complementing markets and hierarchies. Functions and competences appear split among different actors (including NGOs and the community itself) as a means of trying to satisfy residents' preferences.

The sense of community is “a form of collective identity which requires a pattern of common history and culture, geographic inertia, social and economic conditions and previous distribution of administrative competence which have allowed a collective local cultural identity and loyalty to develop and survive” (Bennett 1989: 55). There are many examples in which competences over certain functions (police, housing, urban renewal, education, etc.) have been granted to neighbourhoods, communities or rural villages only because they embody a “natural community” or

have shaped a strong sense of shared identity. This criterion is also often useful for assigning responsibilities to districts in large cities and rural areas and, especially, for pooling common resources. In these instances, the community functions as a “collective actor”; its members recognise the capacity of the community to create operational rules (generally within the framework of collective choice and constitutional rules, but at times also by breaking those boundaries and forcing the enactment of new rules). Moreover, this collective actor has the capacity to make the community members stick to these rules, to create various conflict-solving mechanisms, and to monitor the enforcement of rules.

Communities can also have a say (*i.e.* competences over functions) over natural community resources such as forests, water, fisheries, meadows, as well as on urban renewal, citizen safety or education. Sectoral and general legislation on the distribution of functions and services between levels of government might respect traditions and community rules in order to allocate functions and responsibilities appropriately.

4. Institutional and Political Constraints

This argument contends that institutions are relevant as both constraints and facilitators of the way in which competences are shared between levels of government. It also acknowledges that many choices have political (not economic) grounds and that political choices are often constrained by institutions and by the inertias in which institutions evolve (path dependency). Institutions are not only organisations; the term is also used to describe written and un-written rules that prescribe the behaviour of individuals and organisations.

This approach highlights three aspects of government: the levels of government, the lines of vertical authority between these levels, and the co-operation among departments and among different units of government. These are seen as constraints causing three types of tensions: among the centre and the territories (in federal systems, with local governments usually depending on state legislation, there is also a potential clash between federal legislation and state legislation); among the regional, state and local entities; and among sectors (the conflicts between sectoral legislation and local statutes are highly relevant for the distribution of powers across levels of government).

Moreover, the path dependency of institutions reinforces various trends in how competences are distributed. Highly centralised countries tend to devolve functions and responsibilities in a rather mistrusting way whereas decentralised countries tend to consider local authorities almost as counterparts on almost equal footing with them. Some countries devolve powers to the regions (Spain); others prefer local authorities (France). History and institutional settings frame the way in which political actors understand the dynamics of the system.

The capacity to solve conflicts through the judicial system – and the autonomy of local authorities to appeal to the judiciary against interference from higher levels of government – also constitute administrative constraints related to how functions apportioned across levels of government work in reality.

Bennett (1989) maintains that, in practice, a flexible and co-ordinated system of territorially decentralised units offers the best background for assigning competences. This implies an evolutionary and incremental approach rather than the *a priori* design of institutions, as none of the above criteria can be applied in the real world unless blended with the other criteria. If economic efficiency is given pre-eminence, this presupposes the pre-existence of efficient regional units. If the criteria of sense of community and consumer preferences are advantaged in the distribution of competences, a rather strong local (municipal) administration is required. In the absence of a clear theoretical argument that underpins a rational distribution of competences, decision-makers might learn from practices in more decentralised countries.

II Distribution of Functions across Levels of Government in Four EU Member States

Policy-makers might find inspiration for their decentralisation policies in the experience of other countries. This paper was written on demand of the government of the Czech Republic, with the aim

of providing a comparative analysis that might support future policy decisions. At present, the Czech system is characterised by a large number of local authorities, most of them being of a very small size. In order to respond to the specific needs of the Czech Republic, four countries were selected that approximate the Czech reality – namely, France, Germany, Portugal and Spain – in order to highlight the principles underlying the distribution of functions across levels of government. While all four countries share this feature of numerous, small local authorities, they differ in how local systems correspond to federal and state levels of government. France and Portugal are unitary states; Germany and Spain have, respectively, a federal or federal-type status. The four countries show relevant experiences that represent different solutions to the challenge of allocating functions and competences across levels of government.

Anderson (1989: 19-22) establishes a functional typology that is helpful to understand the range of activities in which governments are engaged. Broadly speaking this typology applies to most Western countries. In the case of the EU Member States, some functions clearly belong to central or supranational governments: a) *Establishing institutions and arrangements for economic development*. This consists of basic institutions for operating a market economy system, including the definition and protection of property rights, the enforcement of contracts, the provision of the currency, the tariff systems, patents, copyright, etc.; b) *Maintaining competition*. Establishment, by the government, of regulations to ensure that businesses compete; c) *Stabilisation of the economy*. The government, through budgetary, monetary or wages policy, tries to influence the economic cycles of growth and recession.

Other functions may, in principle, be performed by any level of government: a) *Provision of collective goods and services*. These goods and services are provided in each national system by different levels of government, although some of them are assigned to a particular level everywhere (e.g. defence is typically assigned to national government, trash collection to local authorities); b) *Conflict resolution*. Governments try to solve or smooth all types of conflicts in order to achieve and maintain economic and social order; c) *Protection of natural resources*. For the sake of current and future generations, governments try to prevent degradation of the natural environment caused either by market activity or by human activity; d) *Securing access by individuals to goods and services provided either by the government or by the market*. Whenever financial transactions are involved, price barriers exist in the purchase of goods and services. Governments may assist the poor, the unemployed, the handicapped and other disadvantaged groups through welfare aids to ensure that individuals can access a minimum standard of living. The description of the four selected countries focuses on the functions described in this paragraph.

1. France

The French system consists of a three-tier local government structure comprising: 36,784 municipalities, 100 departments and 26 regions. The region of Corsica has a specific status. More than 32,654 municipalities have fewer than 5,000 inhabitants (DGCL, 2006). Municipal fragmentation is counterbalanced by a significant number of inter-municipal structures, which can take different forms, depending on their purpose and the form of tax integration. Since the 1999 Act, the inter-municipal structures, which have their own tax system, have blossomed: in 2005, 2,524 inter-municipal associations with fiscal powers grouped 32,308 municipalities (DGCL, 2006: 17).

Traditionally a highly centralised country, France has undergone important changes in its local administration, primarily through a series of Acts adopted between 1982 and 1984. The transfer of competencies and functions has been undertaken by applying the two founding laws of decentralisation, which date back to 7 January and 22 July 1983. These laws modified not only local government structures, but also responsibilities, finances and control mechanisms. At that time, social care, vocational training and ports were transferred to local authorities. Other sectors were transferred later including: education (1986), qualified vocational training (1994), regional train services (2002), and salary for social reinsertion (2004). Departments and regions were given more responsibilities and

new resources, mainly through tax revenue. The *a priori* state supervision on local government Acts was replaced by *a posteriori* legal control.

The second phase of the decentralisation reform, which started in 2005 (based on legislation enacted in 2004), refers to transfers to departments and regions (certain airports, national roads, etc.) (see Annex 1, Table 1 for details). The new transfer of functions is achieved by means of experimentation (*e.g.* restoration of non-state patrimony).

Originally, the main aim of the decentralisation was to transfer blocks of competences, along with resources from the central state, to territorial administrations in a homogeneous way. In the laws, it was envisaged that each territorial level would have a different mandate. The municipality would manage land and local facilities; the *département* would be responsible for the distribution of social aid; and the region would oversee economic planning and development. These responsibilities were codified in the General Code of Territorial Administrations, Law of 21 February 1996.

However, it must be recalled that, in France, one cannot ignore the linkages between individuals nationally elected to the national Assembly and the Senate, and those elected locally as mayors and city council members. Some 95% of deputies at the National Assembly are also mayors or local council members (*cumul de mandats*). Thus, the same elected representatives who demand the transfer of more competences and functions to local governments also put limits to such transfers in certain domains².

The French municipality is an administrative district of the state for some matters. It plays a dual function as an agent of the local community and of the state. As an 'agent of the state', the municipality organises elections, takes part in the elaboration of the census, delivers certificates and enforces general measures of citizen safety. The municipality also carries out criminal investigations under mandate of the judiciary.

As in many other systems, there is a general purpose clause in the French system. Municipalities fulfil needs of the population through self-administration and sectoral legislation. Certain services are compulsory (trash collection and treatment; building and functioning of primary schools; water disposal; the creation and management of cemeteries, etc.); other services are optional (funerary services; culture; sport; social aid; economic promotion, etc.).

In fields that are open to competition, if private initiative cannot meet the demand to create or establish services demanded by citizens (*i.e.* building a theatre), municipalities can step in to fulfil the need. This is justified by general interest principles. Otherwise municipalities cannot undertake commercial activities, unless they are a normal and necessary complement of a public service activity.

In the French system, there is a distinction between industrial and commercial public services (ICPS) and administrative public service (APS). The former are characterised by activities of a nature similar to that of private enterprises; the expenses of exploitation are covered by user charges. The latter are characterised by the nature of their activity and by virtue of the fact that they are financed through taxes and transfers from higher levels of government. In reality, this differentiation is neither practical nor helpful because neither the law nor the jurisprudence clearly defines the industrial, commercial or administrative nature of the service. Depending on time, place, context and presiding judge, one service can be labelled ICPS or APS, unless there is a specific provision in legislation about a given service, which is rare. More precision would be desirable particularly because only ICPS are susceptible to being delegated to private entrepreneurs.

There are services which cannot be delegated to private undertakings because they imply the exercise of power (rulemaking, administrative police, taxation, expropriation, building permits, etc.) or due to the particular nature (management of election lists, management of funerary concessions, health

² In France, senators are elected through universal indirect suffrage by locally elected representatives (*élus locaux*). Currently 96.7% of the members of the *Asemblée Nationale* (lower house of parliament) are *élus locaux* (the lower house of parliament has 577 deputies, out of whom 86 hold an elected post in the regions, 199 in the departments, and 273 in municipalities and communes).

promotion, surveillance of children in school canteens, etc.). Similar provisions can be found in the Spanish legislation, as well.

Some problems that arose during the decentralisation period in the French system have been highlighted by the *Commission pour l'avenir de la décentralisation*, known as the Commission Mauroy (Mauroy 2000). Those problems are very similar to those found in Spain by the commission that drafted the White Paper in 2005 (*Libro Blanco*, see below), namely:

1) *Central government is reluctant to transfer ruling power to local authorities.* According to Mauroy (2000), the reluctance of the central administration to transfer regulatory powers to local authorities has promoted contractual arrangements among different public authorities. These contracts somewhat undermine the ruling capacity of the state by somehow blurring the transferring of a neat “package of competences” as it was originally intended by legislation. Local authorities — by means of contracting with other local authorities-- are no longer *fully responsible* for the provision of certain services and do not fulfil the principle of self-government of the ECLSG.

French local authorities would have two demands in this regard. First, they would like to have the capacity to lead decentralised projects without contracts, but with the help of other authorities in which one is a leader and other authorities contribute with resources to the project, rather than signing a protocol or contract that re-distributes functions. This option could help to avoid the current *mélange* of functions. Second, local authorities should be accorded real ruling capacity (standard setting, design and planning) for the services with which they are entrusted. Local authorities maintain that they already have this capacity for domains such as local police and urban planning; it would not be difficult to have the same ruling capacity in other transferred services.

2) *The attribution of functions to different levels of government is blurred.* Originally, the decentralisation was organised around packages of functions and competences. The goal was to attribute a given competence – in exclusivity – to a given single territorial level, thereby ensuring transparency and avoiding mutual interference among territorial entities from different levels. However, Mauroy (2000) claims that higher levels of government routinely encroach upon lower levels and the number of contracts blurs the clear-cut idea of package of competences. As the report summarises, now everyone does everything: “*On est passé, en vingt ans, d'un principe de décentralisation par blocs de compétences, à un système de partenariat dans lequel tout le monde fait tout*”³. This reflects the deep-rooted mistrust of central French elites in local authorities. The *pésanteur* (sluggishness) of the Jacobinism seems to be still alive and well in France.

3) *Legislation emanating from higher levels of government (sectoral and basic) imposes financial burdens on municipalities.* As in the Spanish case, sector legislation and, in general, legislation promulgated by higher levels of government creates externalities and financial spill-over effects on local authorities. One of the main reasons for this is that neither local politicians nor local officials are consulted on pieces of legislation that will affect the local life and purse. Therefore, local authorities demand to be entitled to express a preliminary voice in the decision-making process, as well as to introduce financial impact assessments of measures proposed in sectoral legislation as the basis for commensurate financial transfers to compensate for those extra burdens.

Inter-municipal associations with taxing powers (EPCIs) have compulsory and voluntary competences listed in the 1999 legislation. Social, economic, cultural development and management of the territory under the EPCI, social cohesion, management of services of collective interest, such as water supply and sewage, and environmental protection, are compulsory competences of EPCIs according to their type. Some EPCIs (depending of size of associated communes) also have the following optional competences: creation and management of road network, park management, building and management of culture and sport centres, social services.

³ Translation: “We have passed, in 20 years, from a principle of decentralisation by blocks of competences to a system of partnering in which everyone does everything”.

2. Germany

The local government structure in Germany comprises two tiers. The lower-tier consists of municipalities and towns or *Gemeinden* (around 13,854 at present); counties and provinces or *Kreise* (323) constitute the upper-tier. Large cities or *kreisfreie Städte* (115) normally hold the responsibilities of both lower-tier and upper-tier of local government⁴. Five features should be noticed as regards to the distribution of functions between levels of government.

First, the traditional “general competence clause” clause is applied so that local authorities take decisions on all affairs relevant to the community within the framework of legislation that emanates from higher levels of government. The Constitution and constitutional case law confer an “institutional guarantee” to local authorities that gives the right to appeal to the federal or Land constitutional courts if they feel that their autonomy has been usurped by sectoral legislation. This practice enhances considerably the autonomy of local authority and the full exercise of their responsibilities in the services bestowed upon them by legislation.

Second, like in France and unlike in Portugal, local authorities perform a “dual role”, which is found in the German-Austrian constitutional and local government tradition (Marcou/Verebelyi 1993; Wollmann 2000a: 118). One role is as a delegated agent of higher governments. As an agent of higher levels of government, local authorities deliver a range of delegated federal and *Länder* functions (*Auftragsverwaltung*), which are assigned to them in local statutes (*i.e.* laws on local government) and sectoral legislation. These functions can be delegated with compulsory instructions *e.g.* social benefits, management of local elections and enforcement of ‘law and order’ regulations (building inspections, driver licences, etc.) or without instructions (trash collection, provision of gas, electricity and water, etc.). Transfers of funds for instructions-based functions are specifically earmarked; the control exercised by higher levels of government extends beyond legal aspects to also encompass policy opportunity or managerial aspects. Most *Länder* have a “governor” (*Regierungspräsident*), who is responsible for the control function. The second role is as a self-government body. As in other countries, municipalities and counties also undertake tasks of self-government. In this case, they finance their activities out of their own revenues and the control by higher levels of government (*Länder*) is confined to legal questions. Around 70% to 85% of federal and *Länder* legislation is implemented by local authorities (Schmidt-Eichstaedt, 1998: 330), as is the majority of EU legislation.

Third, Germany has the unique feature of local branches of national *Wohlfahrtsverbände* (welfare associations or NGOs), which oversee the provision of many social services. Over the last 15 years, the private sector has become increasingly active in this area, especially in the field of elderly care. For the most part, the private sector acts not as a subcontractor of municipalities but as an alternative competitor to the services provided by local governments. This fits the subsidiarity principle embedded in EU treaties and legislation.

Fourth, the range of local government services is quite wide due to the logic of *Daseinsvorsorge* (provision for daily subsistence; Wollmann 2002). This principle stipulates that, as in other countries, municipalities or counties must guarantee the supply of water, sewage, waste disposal, public transport, etc. However, in Germany, this could extend to also include gas, electricity, hospitals, schools, and social and cultural services. Local governments may also participate financially in savings banks. According to Wollman (2002), the protection of these commercial activities and the creation, in practice, of local monopolies were justified on the basis that they served the interest of the local community. Nowadays, European legislation is targeting these practices with measures related to the distinction between services of general interest (SGI) and services of general economic interest (SGEI) (see below).

Finally, unlike in Portugal or Spain, Germany has no basic federal legislation on local affairs that clarifies the distribution of competences and functions; local laws are matters of the *Länder*. Notwithstanding, the functions apportioned to various levels is very similar in most states or *Länder*.

⁴ (See: www.almwla.org. Page visited on 14-05-2006).

The services of municipalities (*Gemeinde*) usually comprise the following fields of activity: general administration, financial services, law and order, school and culture, health and social services, urban planning, economic promotion, traffic and transport. Annex 1, Table 5, illustrates the distribution of functions. The counties or provinces (*Kreise*), *i.e.* the upper-tier of local authorities, are in charge of tasks that extend beyond municipal boundaries and fall in the realm of self-administration. According to Thieme (1996), there are four indicative groups of county tasks (very similar to those of provinces in Spain): a) *supra-municipal tasks* are those ones that cannot be fulfilled by a single municipality (*e.g.* county roads); b) *complementary tasks* include those services discharged by large municipalities but which are not affordable within the financial means of small-size municipalities (*e.g.* hospitals); c) *equalising tasks* are distributional services through which the budget of the *Kreise* assists weaker municipalities; and d) *common tasks* are those services for which a territory wider than that of a municipality is needed, (*e.g.* secondary schools).

In principle, German counties are in charge of the county transport system and network. They also usually oversee specific institutions such as secondary schools, vocational training schools, performing art (music) schools, museums and hospitals. Counties may also be responsible for savings banks, local economic development promotion, and social and youth aid.

3. Portugal

Local autonomy was granted in Portugal by the 1976 Constitution. At present, Portugal has 308 municipalities: 278 on the continent and 30 in Azores and Madeira. In addition, it has 4259 parishes (*freguesias*) (4050 on the continent and 209 in the islands)⁵. There are eight provinces, which serve the purposes of de-concentrated central administration. In a 1998 referendum, the population rejected the creation of a decentralised regional level.

The current constitutional framework for the performance of local authority functions, which at municipal level are far-reaching, differs from the pre-1976 system. The previous system was based on a detailed list of the services entrusted to local authorities; the local authorities were otherwise prohibited from stepping outside the functional scope defined by law. A strict *ultra vires* principle, rather than a general competence clause, was *de facto*, in place. This rule was further complicated by the distinction drawn between compulsory and optional functions, and by differentiation between the various types of local authorities.

A reform was introduced in 1984 to embed the system into the constitutional framework. The Legislative Decree 100/84 of 29 March was straightforward in establishing principles of decentralisation and self-government. This led to much greater flexibility in implementing, at the local level, the general framework prescribed by law.

In 1999, several laws were passed to enhance the responsibilities of municipalities and parishes, and to reform the system of financial transfers. Today, the principles of subsidiarity and the general competence clause (see below) play important roles in the way in which services are assigned to different levels of government. The 1999 Act⁶ on transfer of functions increased and specified more clearly the local government duties. The Act focuses on the transfer of functions, but it does not address how sectoral legislation should involve resources of local authorities or what kind of competences local authorities have.

Current legislation in Portugal establishes a major clear-cut distinction between local self-government and local state government. According to the current system and traditional administrative practice in Portugal, the state does not delegate its responsibilities to the local authorities. Competences of the state that are to be performed on the territory outside Lisbon are usually accomplished through de-concentrated central state offices, located in the provinces. However, municipalities can exercise shared responsibilities with the state, within a given national or regional action programme.

⁵ (<http://www.dgaa.pt/> Page seen on 15-05-2006)

⁶ Lei nº 159/99 de 14 Setembro, Transferência de Competências Para as Autarquias Locais.

There is strong consistency amongst municipalities concerning how tasks are carried out. According to present legislation, regarding local and regional development strategies, the state may participate jointly in investments (usually within the framework of regional and local development strategies, or through contract programmes carried out between the central administration and municipalities, their associations or concessionary companies) in a host of different areas: sanitation, environment and natural resources, transport and communication infrastructure, culture and sport, education and vocational training, public safety, social housing, promotion of economic development, health, and social security, etc.

Parishes (*freguesías*) play the role of neighbourhood administration. In practice, their range of functions is very narrow. The financial resources at their disposal are insignificant and, except for in the main urban areas, their technical and administrative capacity is very limited. The parishes' responsibilities cover the same scope of activities as the municipalities' do, with the exception of the municipal police, urban planning, and transport, which are exclusive municipal responsibilities (see Annex 1, Table 4).

4. Spain

Spain has evolved quite radically in institutional and political terms over the last three decades. This evolution has influenced considerably the distribution of functions across levels of government. In the late 1970s, local authorities acquired constitutionally guaranteed political autonomy; in the early 1980s, a new regional power, known as Autonomous Communities (ACs) emerged. The decentralisation pattern of the Spanish system has benefited the regions in the last 30 years, but not the municipalities. Almost 45% of public expenditure is in the hands of the regions while local authorities have maintained a similar share of public expenditure (between 10% and 15%) during the entire period⁷.

The 17 ACs, plus two autonomous cities (Ceuta and Melilla), were created with their own parliament, government and administration. In addition, two tiers of local government are present in the system: a provincial level (41 provincial authorities and 10 island authorities or *cabildos*) and a municipal level (8,108 municipalities, of which more than 3,500 are minor local entities).

Certain diversity in the attribution of competences was established in local statute (the 1985 Act), using the population size criterion. Annex 1, Table 3 contains a list of compulsory services to be delivered by municipalities, depending on the municipal population size. The 1985 Act does not specify what kind of competences (planning, management, regulation or intervention, etc.) the municipality has regarding these functions (see other details in Annex 1). However, it does signal the service areas in which municipalities are legally competent. In the case that municipalities do not have sufficient capacity to fulfil their legally assigned competences, provinces (upper-tier local government) are assigned the functions of co-operation, co-ordination or substitution/supplementation of municipal capacity. This system is currently under revision.

A White Paper (2005) or *Libro Blanco* on local government, prepared by the Spanish Government, highlights some of the problems associated with the apportionment of competences to local authorities:

- 1) Sectoral laws do not always adequately define municipal competences even though municipalities have local interests in the field.
- 2) In sectoral legislation, there are sometimes provisions by which municipal functions are subject to the control of other public administration, thus endangering the principle of local autonomy or self-government. Three examples are given:
 - Certain local decisions in civil defence, fire fighting prevention and others must be countersigned by other public administrations, even if they are local "in nature".

⁷ www.ine.es and www.map.es. Pages visited on 15-05-2006.

- Agreement of higher levels of government is required for the building of rubbish dumps and the approval of shopping centres.
- Some local decisions depend on sectoral legislation. For example, the increase of local officials' salaries can only be decided within the limits set out in the national budget law.

3) There is a mismatch between functions that the law assigns to municipalities (*e.g.* slaughterhouses), some of which are now provided by other public or private entities, and the current unattended needs that require municipal intervention (*e.g.* immigration or telecommunication).

4) Sectoral legislation often imposes responsibilities and duties on local authorities without financial compensating mechanisms. For instance, local authorities suffer financially because of various sectoral laws including: exemptions from local taxes for objects considered of historical heritage belonging to the Catholic Church or to the state; abolition of barriers for handicapped people (a nationally imposed policy); selective collection of trash; and municipal tax exemptions for religious property, particularly of the Catholic Church.

The White Paper also acknowledges that, according to sectoral laws, the participation of municipalities in activities of their interest to be carried out together with higher levels of government is more rhetorical than real.

Sectoral legislation and basic legislation on local affairs (local statute) have a rather uniform approach towards municipalities: diversity is rarely considered. When diversity is taken into account, legislators use – almost exclusively – the population size threshold. The White Paper recognises that the population threshold often masks the real needs and capacities of municipalities. Small towns might be overloaded. Large cities could have an excess of powers and capacities to deliver services. Unconnected mountain towns have different needs than well-connected municipalities of the same size, etc.

The 1985 Act does not specify which regulatory and monitoring powers related to local services lie in the hands of municipalities, as those services have been traditionally discharged by local authorities themselves. The 1985 legislation is deemed to be unsuited to the current management approaches towards services. Furthermore, local general powers (regulating, delivering, controlling, etc.) for each function are simply outlined, without further details, in the 1985 Act.

In summary, the White Paper (2005) contends that the existing local statute is unclear regarding how competences are assigned to local authorities. The document further denounces that local self-government is undermined on several fronts, sectoral state or regional legislation being just one of the issues.

5. Overall Conclusions for the Four Countries

The four selected countries belong to Napoleonic and Prussian state traditions, which share many common features as regards to how bureaucracy is structured and in connection to the relationships between bureaucracy and politics. At the same time, the distribution of territorial power in these unitary and federal states influences in the way in which functions are distributed between levels of government. Despite obvious differences among the four countries, some functions performed by local authorities are fairly similar; other functions depend on the particular institutional setting in which they are embedded.

Two frameworks can explain how functions have been distributed: the economic efficiency argument and the institutional constraints. In most systems, there has been a movement to foster inter-municipal co-operation in order to overcome the shortcomings of small-size municipalities. These municipal associations have been taking responsibility on those services for which economic efficiency arguments are of relevance (water supply, water treatment, trash collection and treatment, etc.). Municipalities delegate the provision of these service to associations or consortia, which in turn may contract out the production to private service deliverers. The ways in which economy efficiency arguments have been applied are constrained by the institutional setting.

The economic efficiency argument does not, however, support the amalgamation of municipalities into larger local authorities. There are disputes about which size optimally delivers various types of local services. It is indisputable that small local authorities, such as those encountered in these four countries, are unable to fulfil the most elementary role of service providers to the population. This would endanger the accomplishment of universal access to many services as advocated by the European Union. Political and institutional explanations are behind the refusal to amalgamate. Neither politicians nor citizens seem to be willing to give up the representative role of political-administrative authority for the sake of better service delivery.

Inter-municipal arrangements for co-operation not always produce economic efficiencies. A report presented to the French Senate by Dallier (2006: 37) maintains that the achievement of economies of scale (defined by the report as lower prices for services without changing quality) with the inter-municipal arrangements (EPCIs) is unproven for the period 1999-2005. Many examples are given to illustrate the argument, most of which also show that the quantity and the quality of those services have changed for two reasons. First, because citizens are, in some cases, now receiving some services that they lacked in the past. Second, because higher levels of governments are posing constraints and new challenges to the services provided by EPCIs. These factors have created overall price increases rather than economic efficiency.

The institutional constraints framework explains other dimensions of the distribution of functions. The decentralisation patterns in France and Spain have enormous influence on this topic. In Spain, the devolution process has benefited the regional level; in France the local level has been the main beneficiary. In Germany, the role of NGOs in delivering certain types of services and the role of municipalities in public utilities are greater than in other countries. The functions of upper-local tiers of government were devised differently in all these systems, yet the reform has, somehow, respected these original roles. The institutional and political arguments pose constraints on pure economic rationality. It seems that the public choice framework helps little to explain the evolution in these four systems.

The *constitutional choice level* is framed differently in each country as regards to the existence and roles of local statutes. In Portugal and in Spain, there is a local statute for assigning services to municipalities. The French decentralisation Acts play a similar role of apportioning functions and competences to each territorial level. In Germany, sectoral legislation and *Länder* legislation designate services to be delivered at local level. Despite different states' statutes, competences and functions of local authorities are very homogeneous across the federation.

Collective choice and *constitutional choice rules* do not clearly state a difference between competences and functions, thus, administrative practice has blurred the assignment of competences among levels of government. In Portugal, prior to the democratic regime, a closed list of services was included in the law without recourse to a 'general competence clause' principle. Subsequent to the democratic instauration, various laws have identified the share of functions of *freguesias* (parishes) and municipalities. In the Portuguese legislation, the distinction between competences and functions is not clearly acknowledged. In Spain, the list of services does not clarify competences of local authorities in relation to the 1985 Act on Local Governments. However, the new legislation to be promulgated in 2006 makes a distinction between functions, competences and principles that should be applied, along with the 'general competence clause' principle, in the distribution of competences across levels of government. In France, the intent was to initiate devolution of packages of competences; critics say that rather a *mélange* took place.

Clarity is needed, particularly in France and Spain, in distinguishing between functions and competences in *constitutional and collective choice rules* (local statutes and sector legislation). In these countries, there appears to be a problem because of the existing mixing up of functions and competences. As indicated above, while functions are what governments do, competences refer to the specific legal powers that determine how the functions should be carried out. Nowadays, local authorities are more than just deliverers or managers of public services. They perform the role of planners, regulators, contractors, controllers, grant givers, etc. Therefore, basic and sector legislation should be clear about both what local authorities can do and how they should do it.

In all countries, local authorities can give themselves *operational choice rules*. These rules address the way in which municipalities autonomously provide local services. In Germany, the autonomy of local authorities seems to be respected; French and Spanish municipalities still face problems that derive from the doctrine and tradition of *tutelage*. Although this practice has been abolished in legislation, there is a *path dependency* to remain under the tutelage relationship, whereby central administration could intervene in local affairs. For instance, one must remember that the local auditor, the treasurer and the secretary of any Spanish city administration belong to a state *corps*; they are recruited and trained by the centre. Spanish and French municipalities share common problems in trying to preserve their autonomy from higher levels of government.

The defence of the self-government is advocated in terms of more responsiveness and better accountability to citizens. Yet, the self-government of municipalities is continuously at risk in Spain and France for other reasons, as well. Sectoral legislation takes no or scarce account of local diversity and impinges upon local autonomy to devise their own *operational rules*. When drafting legislation that directly or indirectly affects local interests and local purses, consultation with local authorities is usually either non-existent or insufficient. This creates several problems, *inter alia* the production of negative externalities and increased costs for local administrations due to sectoral legislation that does not coincide with the transfer of concomitant extra funds.

Examples of mixed-administration are found in France, Germany and Spain. In many domains, municipalities complement the functions of central state authorities (*e.g.* in health care or primary education). Municipalities act as dual agents in France, Germany and Spain delivering self-government responsibilities as well as tasks of delegated from higher levels of government, unlike in Portugal where de-concentrated ministerial offices deliver state tasks. For example, central state (regions or *Länder*) might be in charge of the teaching staff, school programmes and building schools. Municipalities might be charged with the maintenance and repair of school buildings, management of the canteen, and other operational costs (including the salaries of non-teaching staff). Distributing all these functions and responsibilities among different governmental units might create problems of co-ordination and of accountability. But, in times of financial stress, this might be the only means of delivering services within certain municipalities.

Upper-tiers play different local roles in different countries. In Portugal, provinces are administrative districts of the central administration. In Spain and Germany, provinces and *Kreise* are in charge of inter-municipal services and provide the services that small-sized municipalities cannot provide or manage. In France, departments complement the functions of localities, assuming that *établissements publics de coopération intercommunale* (EPCIs) substitute the inability of rural municipalities as service providers.

Countries planning to decentralise services to the local level may gain some inspiration from various lists of services apportioned to local authorities in different countries (see Annex 1). However, these lists change rapidly and constantly. Therefore, a list is useful as a source of inspiration but it is far more important to establish some principles under which services can be assigned to different levels of government. Although the choice of principles will depend significantly on traditions and political preferences in a given country, an important first step could be to analyse what provisions enacted at a European supranational level are relevant for distributing functions and competences across levels of government.

III European Supra-State Dimension for Assigning Competences to Local Authorities

The European Charter of Local Self-Government (ECLSG) of 1985 is the reference source of supranational local autonomy for all countries that are members of the Council of Europe. The Charter sets out several key principles of the highest relevance for the apportioning of competences to the local level, namely: the clause of general competence; the principle of subsidiarity; the principle of exclusivity of local powers; the principle of diversity in delivery systems; and consultation of local authorities for sector legislation.

European Union treaties, as well as regulations from European Union institutions, are also a source for setting national legislative frameworks on the distribution of functions across levels of government.

The distinction between Services of General Interest (SGI) and Services of General Economic Interest (SGEI) has been a source of some controversy. At issue is the fact that internal market barriers should be removed and SGEI are prone to distort competition when subsidised or directly delivered by public authorities.

The European Union influences its Member States through the development of the internal market and by defining the way in which public services should be subjected to competition. One of the main goals of the EU is to eliminate barriers to the European internal market, thereby allowing goods, persons, services and capital to move freely across Member States. The implication is that private enterprises (from any Member State) will be able to compete with public authorities in the delivery of services that are part of the internal market. This compels governments to behave, in many instances, as enablers rather than deliverers. Although the service provision remains under the responsibility of government, the service production is often being outsourced to non-public organizations and companies. At this point in time, there is an ongoing process to establish boundaries for competitive services. The process influences the capacity of local authorities to be directly accountable to their citizens. Several documents of the European Commission that discuss services of general interest are relevant for local authorities.

The debates on services of general interest (SGI) go back to 1980s. Afterwards, the European Commission has focused on removing trade barriers between Member States in services of general economic interest (SGEI) such as telecommunications, postal services, transport and energy. The debate on services of general economic interest (SGEI), framed in the Treaty of Amsterdam (1997), implies the assignment of responsibilities to the European Community and the Member States for the smooth functioning of these services.

The Charter of Fundamental Rights (2000) also recognises and secures citizens' right of access to services of general economic interest. These provisions have prompted a more careful debate among various parties. Both the European Parliament and the Council have asked the Commission to present a proposal for a framework directive on this question, with the goal of achieving greater clarity on the matter and increased legal certainty for various stakeholders. The Commission initiated the drafting procedure of a framework directive on services of general interest through a Green Paper (2003) and a White Paper (2004).

A problematic issue is that the notion of services of general interest includes services of both general economic and non-economic interest, and covers a broad range of different types of activities, from energy, postal services, transport, and telecommunications to health, education and social services – at the supranational, national and local levels. Most of the problems for local authorities stem from the (unclear) distinction between SGI and SGEI. The term “*services of general interest*” does not appear in the Treaty itself. Broader in scope than SGEI, “it covers both market and non-market services which the public authorities class as being of general interest and subject to specific public service obligations” (White Paper, 2004).

The term “*services of general economic interest*”, used in Articles 16 and 86(2) of the Treaty of Amsterdam, is not further defined by that Treaty or by secondary legislation. In Community practice, it is agreed that SGEI refers “to services of an economic nature which the Member States or the Community subject to specific public service obligations by virtue of a general interest criterion” (White Paper 2004). This concept covers certain services provided by the large network industries (transport, postal services, energy and communications, etc.). But it can also extend to any other economic activity subject to public service obligations such as health and social services – activities of enormous importance at the local level.

The Council of European Municipalities and Regions (CEMR) contends in various reports (2005, 2005a, 2003) that it is unclear how the differentiation between SGIs and SGEIs relates to the European Commission's Green and White Papers, which discuss the distribution between: 1) services of general economic interest provided by large network industries; 2) other services of general economic interest; and 3) non-economic services and services without effect on trade. This distinction acknowledges that there are differences between the various types of services, and that this affects local services. The European Parliament also considered that European legislation is not appropriate for the third case. If

the Commission focuses on large network industries, this will not be a problem for local authorities, in principle. The CEMR maintains that local authorities should be left out of the framework directive. However, this remains unclear from the reading of the White Paper (2004).

In principle, the provision of services of general interest can be organised in co-operation with the private sector or can be entrusted to private or public undertakings. Thus public authorities can define public service obligations, regulate the market and control the operator. However, in the Commission's White Paper, the role of provider is not explicitly recognised. According to numerous critics, including the CEMR, the decision on enabling/providing should be left to local authorities.

The argumentation continues that SGIs with purely local character do not distort or have hardly any disturbing effect on the internal market and, therefore, should be treated differently than those that compete at the European level. Most of these services have social, rather than commercial purposes. In this sense, most public social and health services provided on a non-profit basis by local authorities are considered by local actors as SGI, and not as SGEI. Social and health services are under risk of being considered of "economic" in nature, even though a public authority provides them for social rather than profit motives. The issue is that in some countries, such as the UK, there is a "market" in operation in the health service and education service sectors. However, local associations defend that local and regional services are, in essence, SGI and not SGEI. If this distinction is maintained, it should favour the role of local authorities as providers and producers.

The definition of SGI or SGEI has repercussions on several issues that are relevant for local authorities: state or public aid; generation and supply of electricity (see Annex 1, list of local services in Portugal and Germany); waste disposal (all countries); and savings banks (Germany).

An example of how this can play out in the real world is found in Germany. The Altmark case concerns a public transport bus service in the rural district of Stendal. In 1994, the district council awarded transport franchises to the Altmark Company, along with subsidies designed to offset the costs related to its public service mission. A competing private firm appealed before the German courts, maintaining that the subsidies paid to Altmark contravened the Community rules on state aids. The German Supreme Administrative Court called upon the European Court of Justice (ECJ). In its decision of 24 July 2003, the ECJ ruled in favour of relaxing some measures on state aid, upholding that such subsidies were not considered state aid if certain conditions were fulfilled.

The bottom-line message of the EU Commission directive on services is that public authorities should generally leave the provision of public utilities and services to market forces. Public authorities should focus on enabling the fulfilment of tasks related to the common good by the appropriate providers, an approach that numerous local stakeholders have rejected.

Conflicts stemming from these initiatives can be seen in three other German cases, which Wollmann analyses while assessing the effects of SGEI in the German local system. As SGEI include the provision of public utilities, all are related to these spheres: one case is about electricity supply, another is on waste disposal, and the third concerns savings banks.

According to Wollmann (2000), municipalities previously provided electricity for citizens and businesses, and used the profits to finance other municipal services such as public transport. The EU modified the conditions for electricity supply at local level, making competition compulsory. This has driven down prices, which has the disadvantage of creating more environmental harm, inflicted not only by private providers but also by municipal utilities. The public utilities in the supply business seem to have adapted to competitive conditions. Wollmann confirms a trend of local authorities selling their (relatively profitable) plants, due to either competitive pressure or to financial difficulties.

The waste disposal case traces its roots back to the 1970s, when counties and large cities were given responsibility in waste disposal in Germany. In the debate between local authorities and European authorities, there is a question on whether competition should be restricted to recycling or it should also include the disposal. The potential of undermining public waste disposal services is considerable, as these changes might have an impact on waste disposal fees for residents (Wollmann 2000).

A third example refers to municipal savings banks (*Sparkassen*). Municipal savings banks operate, in principle, to the benefit of citizens and of the local authorities providing citizens with low interest rate loans. At the same time, municipalities financially guarantee the banks. This was viewed as an unfair competitive advantage by the European Banking Union. The negotiation process resulted in amending the guarantee arrangements of these banks in compliance with EU competition regulations.

The liberalisation policies of the EU are trying to open up the now “protected” markets in the provision of private and public services. These measures are affecting the protected local markets in many EU Member States and are undermining the role of local authorities as providers of services. Negotiations continue on several fronts, primarily with the local authorities aiming to acquire the label of SGI so that municipalities can provide various services (health and social services, local public transport and local services in general) without competition. This issue should be borne in mind when assigning competences and functions to different levels of government. The Spanish 1985 Act failed to adequately address the enabling role of local authorities and seemed to focus (although not explicitly) on the delivery side. It now needs a major overhaul.

IV Issues and Recommendations

Once ratified, the European Charter of Local Self-Government (ECLSG) of the Council of Europe is a source for legislation in signatory countries. The Charter establishes several principles that underpin local autonomy. Article 4 of the Charter sets out the principles and the scope of local self-government, namely: “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.” Local self-government is underpinned by several other principles, which will now be described in detail.

1. The General Competence Clause

Article 4-2 of the ECLSG states that: “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.” Under this clause, local authorities, within the limits of the law (basic, sectoral, federal and/or state), have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned exclusively to any other authority. This clause is the ground for the involvement of local authorities in local affairs according to the subsidiarity principle.

Many authors consider this clause as being of residual nature because it operates in those cases in which sector legislation does apportion the actual competences on a field to higher levels of government in an exclusive way. However, the general competence clause also applies to sectors in which legislation assigns competences to different levels of government when local interests are at stake.

In the last decades, the general competence clause has helped to increase considerably the remit of local authorities. For local authorities, there are at least two different ways of acquiring new functions. First, in some cases, some or several competences on a field are not apportioned exclusively to any given level of government and there is no special provision for local authorities on the topic, as an either mandated or delegated task. Economic promotion is a typical example of a service which is not exclusively assigned to a specific level of government. Different tiers of government engage in fostering economic growth and employment in their territory. Local authorities have undertaken numerous initiatives either to bolster rural development or to place the metropolis in the international (financial, commercial, tourist or industrial) arena.

Second, in other cases, the local authorities are mandated to take charge on competences in a field, with some minimal provisions set out in sectoral legislation, but with a vast array of possibilities for municipalities to, *de facto*, expand the competence. For example, social services can be assigned to local authorities in basic legislation in a broad way, as in the 1985 Spanish Act (*e.g.* social services management and promotion and social reinsertion with particulars to be further expressed by sectoral

legislation) or with more specific provisions, as in France (e.g. grants for young people 18-25 years old, for professional and social insertion; or since 2000, a five-year experiment undertaken in certain departments to assure judicial protection of young people). Local authorities tend to further increase their role on social reinsertion, often by replacing the slow responses of central or regional governments. One such example is Spain, where municipalities can be found providing immigrants — both legal and illegal — with social aid.

Recommendations on the general competence clause

- Local statutes should include a general competence clause, even though it would not be necessary if the appropriate Article of the ECLSG has been ratified.
- The general competence clause should be accompanied by principles (see below) and a detailed list of competences for the services newly acquired by municipalities including: designing, planning and standard setting, regulating, delivering, controlling and financing.

2. Principles for the distribution of competences

The following principles are relevant for the distribution of competences among levels of government: self-government or autonomy; subsidiarity; proportionality; flexibility; diversity; and capacity to deliver. Most of the principles that inform the distribution of competences have their roots in the Treaties of the European Union or in the ECLSG of the Council of Europe.

With respect to the *principle of self-government* (autonomy), Article 3.1 of the ECLSG states: “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.” This principle means that local authorities can manage services and have a ruling capacity that defines how services should be delivered by municipal or municipal-external bodies, as long as municipal ordinances on the matter do not contravene other sectoral legislation.

In Article 4-4, the ECLSG further advocates for the exclusivity of local powers: “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.”

Autonomy of local authorities also implies that control is confined to legal matters (jurisdictional matters) and not to opportunity (political matters). From a legal point of view, the control includes the autonomy of municipalities to defend themselves, before the courts of justice, against undue interference from higher levels of government.

Self-government can be compatible with constraints that advocate equality of minimal standards of living conditions. Central or state governments normally try to guarantee solidarity and, at least, equal starting conditions for all citizens. In addition, co-ordination with higher levels of government is justified when supra-local interests are at stake and where there is legal provision for the intervention and means are adequate to ends (principle of proportionality, see below). The question of financial autonomy is analysed in a separate sub-section.

Recommendations on the principle of self-government

Self-government encompasses several normative and practical consequences such as having the autonomy to:

- Elect local councils.
- Manage personnel within the civil service legal framework (freedom to recruit and manage personnel).
- Manage financial resources, so that municipal priorities can be set in the budget, especially for those services non-mandated legally or non-delegated from higher levels of government. Financial autonomy includes deciding on and managing municipal patrimony (revenues, expenses, debt, budget formation, etc.) without tutelage or intervention from higher levels of government.
- Self-organise. This prescription should be unproblematic. However, in many instances general federal or state/regional legislation on procedures, procurement, and organisation of public services could impinge upon the autonomy of municipalities by ignoring or ruling out local diversity and local needs – and therefore the self-government principle.
- Regulate relationships with third parties (citizens, associations, enterprises) within the framework of the general legislation on administrative procedures, public procurement, etc., so that local authorities are empowered to contract out services or to establish ways and means for public participation in local governance.

The *principle of proportionality* requires that higher levels of government intervene in local affairs with adequate measures. Two requirements are of importance: there must be legal provision for the intervention and supra-local interests must be at stake. The definition of proportionality, as developed in the EU context, implies that the content and form of action by higher levels of government must be proportionate to the goals to be achieved, and must not exceed what is necessary to achieve the superior objectives of those higher levels (national solidarity, equality, etc.). The intervention by higher levels of government could imply co-ordinating municipalities or their powers over functions. In this case, local authorities should also have room to manoeuvre, *i.e.* capacity to co-decide.

Recommendation on the principle of proportionality

The local statute should include one Article mentioning the principle of proportionality.

The *principle of subsidiarity*, as outlined in Article 4-3 of ECLSG, states that “Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.”

In theory, municipalities can implement services that are not specifically assigned to other levels of government, especially on those matters in which local interests are at stake. However, three problems interfere with this principle. The greatest risk comes from sectoral legislation, which sometimes regulates local interests and assigns powers to higher levels of government, thereby reversing the principle of subsidiarity. Article 4-6 of the ECLSG establishes that “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.” Second, if the principle of subsidiarity is not substantiated in various pieces of legislation (basic and/or sector), higher levels of government will have every incentive – and temptation – to interfere with local legitimate interest in particular matters. Finally, higher levels of government sometimes delegate powers in specific sectors to municipalities, without ensuring that local authorities have the means and the capacity to deliver the delegated functions. These three problems should be adequately addressed in the legislation.

Recommendation on the principle of subsidiarity

- Basic legislation should state in which fields of activities local interests should be considered by sectoral legislation. Sectoral legislation should justify that, in some cases, local affairs are in conflict (or alternately are coincidental) with regional, state/regional and/or federal affairs. In those cases, services will probably be assigned by sectoral legislation to higher levels of government (e.g. provinces, counties or regions).
- Basic legislation should specify the conditions under which a delegation of power is reversed if a local authority proves that it is unable to fulfil the requirements of the competence because of lack of infrastructure, financial resources, etc. This caveat does not apply to delegation based on voluntary agreements.
- Basic legislation should specify the principle of subsidiarity in such a way that higher levels of government are prevented from interfering with local affairs.

The *principle of diversity* in the territory implies differences in local capacities, demands and needs according to population size, population density, and seasonal influxes of population (tourism). It also relates to the location of the municipality on the territory (flat land or mountainous region, proximity to bigger cities, coastal or inland towns, etc.), location of municipality within communication networks, wealth of the local area and capacity of the municipality to extract part of its wealth (fiscal capacity) (see Parrado 2005). These and other diversities affect the way in which local authorities can provide, produce and deliver their services. Article 4.5 of the ECLSG states that the choice of delivery systems should be at the discretion of local authorities: “Where powers are delegated to them by a central or regional authority, local authorities discretion shall, insofar as possible, be allowed in adapting their exercise to local conditions.”

Recommendation on the principle of diversity

Basic and sectoral legislation should be flexible enough as to take into account diversities when imposing duties and responsibilities on local authorities, i.e. instead of identifying a single parameter upon which to base decisions regarding how to distribute resources, duties and burdens, it would be more appropriate to devise mechanisms that help to establish the full range of parameters and that the application of these parameters will depend on the matter at hand.

The *principle of flexibility* relates to the administrative capacity of municipalities to deliver services. It is closely intertwined with the principle of diversity, and both complement the principle of subsidiarity. The need for flexibility stems from the broad range of diversities and from the fact that several diversities cannot always be adequately addressed through general (local statutes) and sectoral legislation:

1. Local statutes may consider some criteria for municipalities that are willing to offer certain services. For example, city councils (governing body, assembly or mayor) should formally state their willingness to deliver the service; the municipality should be required to document and prove its capacity to provide the service properly; and the municipality must approve regulations to ensure the adequate delivery of the service.
2. Local statutes, while obliging sectoral legislation to consider local interests (and possibly local competences), could adopt the principle of diversity according to the nature of the services to be discharged in that given sector.
3. Sectoral legislation could limit the obligation for certain municipalities to deliver certain services, based on diversity criteria such as demographics, geography, boundary limits related to technical and economic efficiency of the service and to the urban/rural area covered by the municipality, etc.
4. In the case that municipalities are willing but unable (or unwilling and unable) to deliver certain services, a legal provision could establish that the service will be discharged by a higher level of government (provincial, regional, etc.). In those cases, care must be taken to ensure that the

upward delegation of powers recognises that both levels are accountable to citizens through elections. The possibility should be considered that the capable but unwilling municipality is charged the total or a portion of the costs of the service – and must find the relevant ways and means to meet this financial obligation.

Recommendation on the principle of flexibility

Local statute should specify the conditions under which sectoral legislation can impose burdens on local authorities.

The *principle of universal access* has been promoted by the EU in order to guarantee access for everyone – regardless of economic, social or geographical situation – to a service of a specified quality at an affordable price. Universal access does not require public delivery of the service. Universal access is a claim that citizens might require from government for certain services that are publicly provided, but may be privately or publicly delivered (produced). Examples of universal access can be found in the provision of water, management of water disposal, trash collection, cemetery services, public health or public order, etc. The principle of universality (or general interest) is questioned in services targeted to specific groups with specific needs, *i.e.* critics would say that it does not make sense to make services universal when they are designed to address the needs of certain groups (drug addicts, senior citizens, etc.).

For the sake of equality, higher levels of government may want to achieve a minimal baseline of service quality and quantity for citizens across the territory. It is important to note that service starting conditions are not the same as service standards: starting conditions are one dimension related to the quality of service provided to citizens whereas service standards depend on how subjectively and/or objectively a service is considered. The subjective and objective perceptions may vary from one part of the territory to next, according to demographic, geographic and economic differences as well as according to variations in the preferences, demands and needs of citizens. These diversities can be obstacles for achieving the same standard everywhere and must be taken into account in order to ensure a minimum standard by local authorities (see Parrado 2005).

Recommendations on universal access

Local statute should include a list of services for which access is universal, *i.e.* to which each and every citizen is entitled access. The principle of universality should be applied only to those services for which the case for universal access is undeniable.

3. The Assignment of Regulatory Competences

Article 4.1 of the ECLSG states that: “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.” Without this article, the general competence clause would operate in the vacuum. One of the dimensions of the full exercise of a competence is *regulation* (as indicated elsewhere, the full set of dimensions includes: designing, planning and standard setting, regulating, delivering, controlling and financing).

French local authorities complain, for instance, that decentralisation measures frequently do not consider the *regulation* of the decentralised services by municipalities. The French arrangements show certain misgivings that local regulations will endanger the “national republican” goal of equality. However, it must be remembered that, for some services, municipalities already hold this ruling power. In the discussion on the relationship between local rules (ordinances) and ordinances of higher levels of government, clashes among the two appear either to cause unnecessary legal disputes or to undermine local autonomy.

Ordinances on a given subject from higher levels of government may be necessary when competences on a given function are not undertaken by a particular municipality because it lacks the resources to do so. In this case, an upper-tier local authority (*e.g.* a province or *Kreise*) will be in charge of the service

and of issuing its own ordinances (at the same time that other municipalities, which accepted to discharge the service, have their own ordinances). In some instances, provinces might be tempted to issue ordinances that should also apply to other municipalities, regardless of the fact that such municipalities are discharging the service well by themselves. This aspect causes conflicts among levels of government.

Recommendation on assignment of regulatory competences

- Local statute should clarify the competences granted to local authorities. At minimum, the statute should specify the following competences either in a general Article or in a specific Article related to each field of activity: designing, planning and standard setting, regulating, delivering, controlling and financing. Moreover, only the law should limit the regulatory capacity of municipalities, not upper-tier local governments' ordinances.
- In addition to this regulatory power, basic legislation on local affairs could include other dimensions of the full exercise of a competence such as: self-organisation; inspection; sanctions; taxing and financing; planning, designing and setting standards of the service; evaluation of and intervention in sub-contracted services; expropriation, etc.
- Finally, basic legislation should specify the meanings and limits of these powers and responsibilities. For instance, it should identify details such as who is responsible for certain competences (the mayor or the council or both) or how sanctions are classified and what are the limits (amounts) for each type of sanction.

4. *Fields of Local Interests*

Local stakeholders have a stake in almost every field of service activity. Sectoral legislation may claim, when local interests co-exist with the interests of higher levels of government, that competences over a given function should be assigned to the higher level. The following open list (drawn from the countries examined in this paper; see Annex 1) includes a number of fields in which local interests are at stake. In terms of public tasks performed by local authorities, the countries studied in this paper rank at the middle of the spectrum (the Scandinavian countries would rank high in this spectrum and Ireland ranks low). The list presented approximates the reality of services provided by local authorities in these four countries of Napoleonic and Prussian state tradition. In this context, the fields of basic local interest are associated with competences for:

a) Managing the relationships between the city council and the citizens. This relates to matters such as managing the registry office, organising the census and encouraging citizen participation in political life (elections, referendum, participation in local affairs, etc.). In most of the countries examined, the municipalities perform a dual role as agents of the state and as direct agents of local citizens to whom they have direct accountability. Main tasks related to this role are the civil registry or the levy of conscripts.

b) Controlling and monitoring the use of the territorial space (urban, and rural). In all countries examined, municipalities are able to regulate, under their own responsibility, the use of the territory by citizens and businesses through urban and territorial planning. Urban regeneration schemes or programmes to protect historical, cultural or humanity heritage sites can be included in this area. There is, of course, sectoral legislation that should be respected by municipal ordinances on fields such as the environment, coasts, airports, train networks, water resources or urban affairs. In these fields, in addition to the regulatory capacity, other instrumental competences are also of high importance (expropriation, sanction, inspection, licensing the use of buildings for specific economic activities, etc.).

c) Authorising, licensing and monitoring economic and non-economic activities on the local territory. These competences relate to businesses and to other aspects of social life. In many of the analysed examples, local authorities are in charge of licensing businesses. This set of competences complements those related to urban matters. In this case, the subjects of regulation, inspection, sanction, etc. are activities that fall entirely under the local domain: fairs, markets, cultural and sport

events and any kind of economic activity. Other aspects of social life (demonstrations, activities of associations, etc.) might be subjected to local authorisation.

d) Civil protection. These competences relate to at least three fields of activity: citizen safety, public health and civil defence. In France and Spain, citizen safety is partially ensured by local police and fire services, together with the national security forces; the local authorities could co-ordinate the different security forces operating on the territory. Some countries also entrust local police with the enforcement of local ordinances and, as in France and Spain, with investigation for the judicial system. Public health is concerned with many fields: consumer protection; food inspection in markets, supermarkets, and restaurants; licensing and monitoring dogs and other pets; food handling, water quality, and control of epidemics; etc. Civil protection and citizen safety may be produced and provided directly by local authorities, but other forms of non-public provision may also exist (e.g. neighbourhood safety activities or volunteer fire brigades). Competences for public authorities in these fields should take into account regulation, direct provision, delegation and intervention (and eventually) rescue of activities that are mismanaged by other non-public providers.

e) Regulating, providing and financing typical municipal services such as street maintenance, cleaning and lighting, upkeep of gardens and parks, water provision and treatment, energy and telecommunication provision, trash collection (households, industrial and agricultural), and funerary services. Many of these services are susceptible to being labelled as services of general economic interest. Therefore, the evolution of this definition according to EU legislation will determine the degree of liberalisation of services and the degree of competences that municipalities could be entrusted with. Local European associations demand that local authorities maintain the right to decide whether local authorities and/or non-public providers could provide all local services; the European Commission seems to push for the liberalisation of these sectors. In addition, financing these municipal activities beyond user charges, in the case that the provision has been out-sourced, could be treated as state aid, which would contravene relevant European regulations (unless the four Altmark criteria set by the ECJ are met). These services are essential for the quality of life of citizens and municipalities should have a say in their delivery. There is considerable room to manoeuvre for municipal ordinances in these matters, even though many are activities that have not only economic significance but also straightforward commercial purposes. For instance, in telecommunications, municipal ordinances may complement sectoral legislation by determining where and how mobile phone aerials could be placed or by compelling private operators to share infrastructures.

f) Planning, delivering, regulating and/or financing personal services to citizens. This field includes services such as education, health care, culture, housing, care of special needs groups (elderly or handicapped people, drug addicts etc.). In most countries, the standard setting and design of health care and education are normally under the realm of higher levels of government. At the same time, these fields of activities are characterised by an intertwining of competences on different aspects, involving different authorities. For example, because the cost of infrastructures in health (operation theatres, hospitals, ambulatory health care, etc.) requires economies of scale and the regulation of the medical professional practice is subject to national standards, health competences are usually shared by different levels of government. In some countries, local authorities foster the public health care in a local area by using the municipal budget to build hospitals and centres of primary care. In other countries, sectoral legislation provides that local authorities maintain buildings and/or pay for the salaries of non-medical staff. Local authorities may also be consulted whenever planning of health care is involved in the area. Similarly, in education, standards are normally defined by the federal or national level while state and regions are usually in charge of universities or further detailed regulation, and municipalities normally create, maintain and repair schools for primary and secondary education (as well as pay for non-teaching staff).

g) Regulation, designing, monitoring and sanctioning in transportation. Parking, traffic flows, restrictions to traffic and pedestrian behaviour have a regulatory nature, which should be considered if sanctioning could mean the delivery of law abusers to the judges. Considerations must be taken in order to include or exclude supra-local roads from traffic control. Mobility also concerns the transportation of both persons and goods. For the former, it implies activities such as regulating, licensing and monitoring taxi activities and the regulation and provision of public transport (bus, train,

metro, boat, etc.). For the latter, local authorities could also regulate various aspects of transportation and delivery of goods to businesses and households.

h) Housing. Municipalities are typically involved in two broad fields of activities related to housing: private housing and public housing. In some countries, municipalities control private housing by issuing permission for restoration works and by ensuring that new housing construction respects local ordinances that regulate volumetric issues, height, style (according to cultural and historical features), etc. Public housing is typically more concerned with the role of the tenant (building and renting houses to citizens) or promoting social housing with special and protected features for disadvantaged groups (ethnic groups, young population, low rent families, etc.).

The list of competences over areas in which local interests are at stake may be completed with the following items: 1) Competences for protecting the environment (regulation, promotion, sanctioning) in fields such as landscape protection, gas emissions, noise, energy savings; 2) Competences for regulation, and providing cemeteries and funerary services; 3) Competences for creating, regulating, and providing sport and leisure services; 4) Competences for creating, regulating and providing cultural infrastructures (libraries, theatres, multipurpose centres, etc.).

The list of fields in which local authorities have an interest could expand, although the one presented above covers more than 90% of the local services provided by most local authorities in the four countries examined. The question is whether or not to be very detailed in the local statute when considering these fields of activities. There may also be an open provision whereby other fields of activities can be added to the list through sectoral legislation.

Recommendation on fields of local interest

The following list of activities is drawn from a group of countries that rank “medium” as regards the functions performed by local authorities (France, Germany, Portugal and Spain). Any country considering decentralisation may want to consider, at minimum, the following activities and the way in which they will be handled:

- Managing the relationships between the city council and the citizens in political participation (referendum, elections, citizen participation, etc.).
- Controlling and monitoring the use of the territorial space (urban and non-urban).
- Authorising, licensing and monitoring economic and non-economic activities on the local territory.
- Civil protection.
- Regulating, providing and financing typical municipal services (street cleansing and lighting, waste collection and treatment, water supply and treatment, sewerage system, etc.)
- Planning, delivering, regulating and/or financing personal services to citizens as education, health care, culture, housing, care of special needs groups.
- Regulation, designing, monitoring and sanctioning in transportation.
- Housing (private and public).
- Protecting the environment (regulation, promotion, sanctioning) in fields such as landscape protection, gas emissions, noise, energy savings.
- Creating, regulating, and providing sport and leisure services.
- Creating, regulating and providing culture infrastructures (libraries, theatres, multipurpose centres, etc.).

If a country has been highly centralised until recently and is considering devolving functions and competences, there are various ways in which this list could be used. It could be: reduced at the initial stage of the devolution process and revised at a later stage; staged in periods or staged according to pilot tests (see Annex 1 for the example of recent decentralisation laws in France); or simply left open with a provision to add new functions and powers through sector legislation.

5. Role of Upper-Tier Local Authorities

In the analysed countries, three government structures have been considered. In Portugal, provinces are de-concentrated units of state administration; therefore, the state administration compensates for the incapability of certain municipalities to provide certain services. In France, the decentralisation laws have devolved packages of competences to different levels of government. In theory each level should have different powers and responsibilities on the same or different fields of activity. In practice, critics say that “everyone now does everything” and municipalities are devoid of real competences. In the case of inability to cope with assigned competences, municipalities create EPCIS (*établissements publics de coopération intercommunale* or associations of municipalities) rather than handing over such competences to the upper-tier of local government. For this paper, the option of Germany and Spain is preferred because it applies, in a clearer way, the principle of subsidiarity. Lower-tiers of local authorities (municipalities) hold, in principle, the most powers because they are closest to citizens. Upper-tiers of local authorities intervene on a subsidiary basis or whenever supra-local interests are at stake (*e.g.* provincial roads or transport). If this subsidiarity-based strategy is considered, the main competences of upper-tiers of local authorities would typically include:

1. Competences for co-operating with municipalities (*e.g.* by creating networks of municipalities or providing technical or legal advice on services). In this case, the municipalities are the clients of the upper-tier.
2. Competences for substituting for municipalities that are unable to deliver the mandated or delegated services. In this case, upper-tier authorities should have the same competences as listed above and citizens would become the direct recipients of their services.

3. Competences for creating, designing, regulating and providing services of supra-municipal nature within the boundaries of the county, province or *Kreise*.

Recommendation on the role of upper-tier local authorities

- If a country is designing a system of local delivery of services, it should leave supra-municipal and residual competences to the upper-tier of local authorities, (i.e. replacing or supporting municipalities that cannot deliver services of universal access or mandated services).
- In earlier stages of the decentralisation process, central governments should be prepared to strengthen the role of provinces until municipalities gain sufficient capacity to adequately provide local services.

6. Financial Autonomy

Any transfer of functions and competences should consider the relevant financial aspects. The autonomy of local authorities from the financial point of view entails the following features: 1) Municipal functions assigned by law should be financed by non-conditional resources (preferably taxes or non-conditional transfers), otherwise, municipalities will lose autonomy, (see also art. 9.1 of the ECLSG). 2) If higher levels of government transfer down competences on a compulsory basis, they should also transfer financial and human resources (unconditional), otherwise the principle of autonomy would be undermined. 3) In case of transfer of competences (on a non-compulsory basis), transfers could be either conditional or unconditional. 4) Regulation by higher levels of government may bring about negative externalities to local authorities. There should be a guarantee in basic legislation whereby sectoral legislation causing higher expenses to local authorities should establish the criteria to: a) decide on how much additional financing is needed to cope with the added tasks; and/or b) how the national or regional governments will provide the municipalities with the necessary funds.

Two broad aspects should be considered here: the general rules for financing local services (preferably taxes and non-conditional grants) and the financial implications of sectoral legislation, transfer laws and provisions from higher levels of government. In this regard the case of Denmark (not examined in this paper) may illustrate a viable solution in which local counterparts are taken seriously. General legislative provisions make it compulsory that any transfer of responsibilities to local authorities must be accompanied by the financial transfer of an exact amount of money, which will be distributed among municipalities according to a pre-established general formula for financial distribution. The process starts with a proposal of the ministry of the involved sector providing some figures for the transfer. These figures contain the aggregate national costs of the service, according to the ministry data. After that, the Danish Association of Local Municipalities is engaged in the discussion. Their experts revise the broad figures and negotiations start with detailed data, indicators and counter-proposals. Once a figure is agreed, it is then transposed into the legislation. This process requires a strong association of local authorities with the knowledge to be a credible counterpart to central government. The Spanish 2006 Act does not include similar provisions, which, if included, would add credibility to the financial commitments from sectoral ministries.

Recommendation on financial autonomy

- Self-government implies financial autonomy that can only be achieved if services by municipalities are financed primarily through local taxes and non-conditional grants. Whenever possible, non-conditional grants should replace earmarked grants.
- Local statute should stipulate that any sectoral law that transfers functions and/or powers to local authorities should establish the exact amount of financial and human resources to be transferred to the local level.
- Local authorities should strengthen national associations of municipalities in order to negotiate with national government the conditions under which the transfer of competences and/or functions should be accomplished.

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ANNEX 1. Functions Assigned to Local Authorities in Four EU Countries. A Synoptic Table

Table 1 France - List of mandatory services for municipalities

	Commune	Departement	Regions	State
Registry Office				
Registration of births, marriages, deaths and similar	X			X
Elections				
Electoral functions (organisation of elections, election lists)	X			X
Law and order				
Local police (police du maire)	X			
Land development, town planning and urban renewal				
- Consulted on regional planning for national policies			X	
- Regional plan for territory management (<i>schéma régional d'aménagement et de développement du territoire (SRADT)</i>) This plan defines localisation of large equipments, infrastructures, and services of general interest, and monitors the coherence of state and other territorial entities policies on the territory.			X	
- Agreements with state for joint actions (<i>i.e.</i> plan Université 2000 for the construction of universities)			X	X
- Since 2000, prepare and approve of urban local plans. This allows them to give building permits in the name of the commune and no longer in the name of the state, as previous to 2000.	X			
- Plan of hiking and bicycle trails	X			
- Planning of protection of sensitive natural spaces	X	X		
Water, sewage				
- Water treatment and supply	X			
Household refuse				
- Trash collection	X			

	<i>Commune</i>	<i>Department</i>	<i>Regions</i>	<i>State</i>
Transport				
- Transport (<i>i.e.</i> municipal, departmental, regional)	X	X	X	
- Since 2002, organisation of lorry transport system and regional train transport system except for Ile-de-France			X	
- Since 2002, on demand management of national ports			X	X
- On demand, since 2006 own and manage all non-autonomous state ports, plus fishing and commercial ports (that are transferred)	X	X		X
- Elaboration and approval of development planning for the rural region		X		
- On demand, management of civil airports since 2006 (if demanded by local authorities)	X	X		
- Since 2000, prepare framework planning (<i>schéma directeur de cohérence territoriale</i>) by proposing urban objectives on habitat, economic development, movement of persons and goods	X			
- Since 2004, regional plan for transport and infrastructures		X		
Roads				
- Since 2004, maintenance of some national routes		X		X
- Maintenance of roads (<i>i.e.</i> municipal, department)	X	X		
Parks, gardens and open spaces				
- Management of rivers, lakes and other water surfaces		X		
Housing				
- Since 2000, funds for housing		X		
- Social and student housing	X			
Healthcare				
- Public health	X			
- Vaccination, fight against tuberculosis, leprosy, AIDS and sexually transmitted diseases	X	X	X	X
Social services				
- Support of handicapped people (<i>i.e.</i> policies of social insertion)		X		

	<i>Commune</i>	<i>Département</i>	<i>Régions</i>	<i>État</i>
- Since 2000, action plans for elderly people		X		
- Support of elderly people (<i>i.e.</i> creation and management of nursing homes, self-support systems, etc.)		X		
- Since 2003, social insertion of minimum revenue (<i>revenu minimum d'insertion – RMI</i>) (entitlements, conditions of grants transfers, expulsion, insertion). The amount and the conditions of assignment are fixed nationally.		X		X
- Grants for young people (18-25 years old) for professional and social insertion	X	X		
- Since 2000, judicial protection of young people (experiment for 5 years in certain departments)		X		X
- Social aid for infants (<i>i.e.</i> management of dossiers for adoption, support of low-income families, etc)				
- Management of kindergartens	X	X		
- Complementary action of departmental CCAS (<i>Centres Communaux d'Action Sociale</i>)	X	X		
Education				
- Funding of universities			X	X
- Construction, re-construction, enlargement, functioning, equipment, and maintenance of high school (grammar schools) lycées, special education institutions and maritime high schools	X		X	
- Since 2004, definition of recruitment sectors and responsibility on recruitment, management and salary of non-teaching staff of secondary schools (<i>national delegation of conseil départemental de l'Éducation nationale</i>)		X		
- Since 2004, definition of recruitment sectors and responsibility on recruitment, management and salary of non-teaching staff of high school (grammar schools) lycées, special education institutions and maritime high schools			X	
- Since 2004, ownership of high school (grammar schools) lycées, special education institutions and maritime high schools if agreed by communes, associations of municipalities or the department			X	
- Construction, re-construction, enlargement, functioning, equipment, and maintenance of junior high schools (colleges)	X	X		
- Definition and implementation of regional policy of professional training for young and adult population			X	
Culture				
- Since 2004, maintenance and restoration of patrimony not included in state ownership		X	X	
- Conservation of rural patrimony		X		X
- On demand, the ownership of national monuments with certain features	X	X	X	X

	<i>Commune</i>	<i>Department</i>	<i>Regions</i>	<i>State</i>
- Lending library, museums, musical conservatories (municipal or departmental scope)	X	X		
- Organisation and funding of regional museums				X
- Conservation of regional archives (can be delegated to department)		X		X
- Since 2004, general inventory of cultural patrimony (can be delegated to other territorial entities)	X	X		X
- Since 2004, as experiment, for four years, the management of funds for restoration of (non-state) patrimony				X
- Since 2004, organisation and funding of initial performing art training				X
- Since 2004, planning of performing art training	X	X		
- Since 2004, organisation and financing initial performing art training (music, dance and performing arts in general) within a departmental framework	X	X		
Sport and leisure	X			
- Building and management of seaports (leisure)	X	X		
Economic development				
- General systems of grant (in accordance with regional plans)	X	X		X
- Since 2004, co-ordination of economic development policies (definition of grants for enterprises)				X
- Management of European structural funds				X
- Since 2002, grants for public enterprises	X	X		X
- System of grants for rural equipment		X		
- Tourist office	X			

Sources: Law 13 December 2000; Law 27 February 2002; Law 18 December 2003; Law 13 August 2004; <http://www.almwla.org/anglais/default.htm>

Table 2 Spain – List of services (1985-2006) in basic legislation

	<i>Municipalities</i>	<i>Province</i>	<i>Regions</i>	<i>State</i>
Law and order				
Public safety				
<i>Examples</i>				
Local police (judicial activities, surveillance of public buildings and spaces, environmental protection, crime prevention, support in case of vehicle accidents)	X			
Municipal traffic control	X			
Land development, town planning and urban renewal				
Urban regulation, management, and sanction	X			
Water supply	X	X		
Street lighting	X			
Street cleaning	X			
Trash treatment	X			
Trash collection	X			
Sewerage	X			
Public transport (scope municipal and provincial)	X	X		
Province plan	X	X		
Water, sewage	X			
Household refuse	X			
Roads				
Paving and maintenance of roads (<i>i.e.</i> municipal, provincial)	X	X		
Access to localities	X			
Parks, gardens and open spaces				
Parks, gardens	X			

	<i>Municipalities</i>	<i>Province</i>	<i>Regions</i>	<i>State</i>
Monitoring compulsory education (<i>i.e.</i> checking that pupils are at school)	X			
Culture and leisure				
Protection of historical patrimony (scope municipal, provincial)	X	X		
Sport activities and centres	X	X		
Cultural activities and centres	X	X		
Leisure	X	X		
Public library	X	X		
Economic development				
Tourism	X	X		X
Economic promotion	X	X		X
Slaughter house	X			
Fairs				
Economic support for rural areas	X	X		X
Civil defence				
Civil defence	X			
Fire extinction and prevention	X			
Others				
Cemetery and funerary services	X			
Wholesale food market and hawking activities	X			
Consumer protection	X			
Support (juridical, economic and technical) to municipalities (small)	X			
Arbitral board for extra-judiciary arrangement on consumer issues		X		X
Licences for dangerous animals	X			

Sources: 1985 Act on local government and several sector laws; <http://www.almwla.org/anglais/default.htm>

Table 3 Spain - Distribution of services according to population size (1985-2006)

Services	All municipalities	More than 5000 inhabitants	More than 20000 inhabitants	More than 50000 inhabitants
Street lighting				
Cemetery				
Trash collection				
Street cleaning				
Water supply				
Sewerage				
Local roads				
Health control of food and beverages				
Open spaces				
Public library				
Food market				
Trash treatment				
Civil defence				
Social services				
Fire extinction				
Sport centres				
Public transport				
Environment protection				

Sources: 1985 Act on Local government

Table 4 Portugal - List of mandatory services for municipalities

	<i>Commune</i>	<i>Freguesía</i>
Registry Office		
Law and order	X	
- Local police	X	-
Land development, town planning – urban renewal		
Rural and urban equipment (municipal cemeteries, markets and fairs, streets, buildings for public services)	X	X
Street lighting	X	-
Licensing and monitoring of (building elevators, petrol stations):	X	-
- Territorial planning	X	X
- Definition of urban development areas	X	X
- Definition of urban restoration areas	X	X
- Participation in regional territorial planning	X	X
- Licensing building in beaches and ports (Central Administration must report on this)	X	X
Environmental issues		
Planning, management and investment in:	X	X
- Noise monitoring	X	X
- Monitoring air quality	X	X
- Management of local protected area; participation in managing regional and national protected areas	X	X
- Management and cleaning of beaches and bath areas	X	X
- Licensing and monitoring wells for underground waters	X	X
Water, sewage		
- Water supply (planning, management and investment)	X	X
- Water treatment (planning, management and investment)	X	X
Household refuse		
- Trash collection (planning, management and investment)	X	X

	<i>Commune</i>	<i>Freguesía</i>
Energy distribution		
Electrical energy (distribution of electrical energy of low voltage)	X	-
Energy (general) (investment in different energy resources)	X	-
Transport		
Municipal transport, municipal airports and heliport (planning, management and investment)	X	-
Roads		
Municipal road network (planning, management and investment)	X	-
Level crossing maintenance (planning, management and investment)	X	-
Parks and gardens		
Rural and urban equipment (green spaces)	X	X
Housing		
Make available places for social housing and promote and manage social housing	X	-
Programmes for repair and maintenance of degraded housing	X	-
Healthcare		
Building and maintenance of health centres	X	-
Take part in consultation exercises of the National Health System	X	-
Management of municipal thermal springs	X	-
First aid	X	X
Social services		
Management and investments in nursery schools, homes for elderly and handicapped people	X	X
Participation in national programmes to reduce poverty and social exclusion	X	X
Education		
Planning, management and investments in equipments (building, repair and maintenance of nursery school, primary school), draft school charter, and create local education councils	X	X
Assure school transport, assure and manage school canteen, guarantee lodging for school pupils with transport problems, collaborate with school social action, development of complimentary educational activities	X	X
Management of non-teaching staff for nursery schools and primary school	X	X

	<i>Commune</i>	<i>Freguesía</i>
Culture		
Planning, management and investment in (municipal culture centres, libraries, theatres and museums) also in any landscape, cultural, urban patrimony	X	-
Management and planning in municipal camping sites, sport centres	X	X
Licensing and monitoring (show centers)	X	-
Sport and leisure		
Economic development		
- Create or take part in municipal and intermunicipal enterprises	X	X
- Manage municipal programs from the regions	X	X
- Support of local initiatives for employment	X	X
- Support of professional training	X	X
- Create or participate in institutions for promoting local tourism	X	X
- Participate in regional agencies for tourism	X	X
- Participate in defining tourist policies	X	X
- Create and participate in associations for rural development	X	X
- Participation in forest and agriculture regional councils	X	X
- Licensing and monitoring tourist offices, industries, mineral plants, shops	X	X
Consumer protection		
- Promoting actions for consumer protection	X	-
- Create mechanisms for consumer disputes	X	-
- Support of consumer associations	X	-
Civil defence		
Create fire brigades	X	X
Building and maintenance of fire headquarters	X	X
Support for buying equipment for voluntary fire brigades	X	X
Building, maintenance and management of centres for civil defence	X	X
Building and maintenance of infrastructure for forest fire fighting	X	X

	<i>Commune</i>	<i>Freguesia</i>
Co-ordination of forest clearing	X	X
Other - Participation in international projects of European Union countries and countries of with Portuguese language	X	-

Sources: Lei n° 159/99 de 14 Setembro, Transferência de Competências Para as Autarquias Locais; <http://www.almwla.org/anglais/default.htm>

Table 5 Germany - List of services of municipalities and counties

	<i>Districts and Communes</i>
Registry office	
Registry office (name rights, civil status, identity card, report after moving house, naturalisation, etc.)	X
Law and order	
Enactment of regulation in security law	X
Land development, town planning – urban renewal	
Supervision of town planning	X
Urban renewal	X
Water-Sewerage	
Water supply	X
Waste disposal	
Trash collection	X
Removal of dead animals	X
Control of waste sites, especial waste, etc.	X
Provision of energy and energy distribution	
Public transport	
Road network	
Maintenance and building of <i>kreise</i> streets-roads	X
Cleaning of roads in winter (snow)	X
Park and gardens	
Promotion of garden and landscape culture	X
Housing	
Building permits	X
Promotion of social housing	X
Health	

	<i>Districts and Communes</i>
Building and maintenance expenses of hospitals and residential homes for the elderly	X
Management of help for mothers after giving birth (typically 10 days after birth)	X
Social welfare	
Management of local social aid and youth aid	X
Counselling services (education, against sexual discrimination and violence, etc.)	X
Management of housing money and subsistence expenses (according to legislation from higher levels of government)	X
Handicapped	X
War victims	X
Maintenance expense	X
Family, drugs, AIDS counselling	X
Monitoring kindergarten	X
Education	
Operational costs of grammar schools, secondary school, vocational school, schools for handicapped children, school transport	X
Promotion and management of institution for adult education	X
Management of media centers (DVD, films, CD borrowing)	X
Culture	
Management of supra-municipal public libraries	X
Maintenance of patrimony	X
Sport and leisure	
Promotion of sport of supra-municipal nature	X
Management of swimming pools	X
Economic development	
Economic promotion	X
Tourist information	X
Miscellaneous	
Fire extinction	X

	<i>Districts and Communes</i>
Rescue service	X
Consumer protection (supervising slaughterhouses, animal illnesses, food, markets, etc.)	X
Office of the land (regional) savings bank	X
Control of municipal matters (taxes, equalisation of municipal income, medals and distinctions)	X
Organisation of elections of all levels of government	X
Auditing of municipal accounts	X
Management of driving license (modification, extension, international, etc.)	X
Pollution control	X
Protection of the environment	X
Civil defence and protection against different problems (epidemics, floods)	X
Authorisation of gatherings in public spaces and demonstrations	X
Control of “black” markets	X
Dogs permission	X
Management of foreign, asylum rights	X

Sources: <http://www.almwla.org/anglais/default.htm>