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Monitoring of the application of the European Charter of Local Self-Government in Italy

Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (Monitoring Committee)

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Summary

This is the 4th report monitoring the application of the Charter in Italy since its ratification in 1990.

Italy has a long tradition of local and regional autonomy that has shaped a state characterised by regionalism, which has been further developed in recent decades.

The rapporteurs note with satisfaction that Italian authorities gave meaningful consideration to the 2017 Congress Recommendation. The report also highlights that local and regional revenues are increasing, consultation processes have improved and some progress in the recruitment of staff has been observed. In addition, work to develop the legal basis for the re-introduction of direct elections in provinces is being undertaken, the equalisation system has improved, and the country has signed and ratified the Additional Protocol to the Charter on the right to participate in the affairs of a local authority (CETS No. 207).

However, the rapporteurs point out some aspects deserving special attention, such as the absence of legal recognition of the Charter by the Constitutional Court, the limited scope of action of metropolitan cities and provinces, the lack of adequate and commensurate resources for provinces, and the lack of a possibility for provincial and metropolitan councils to formulate a vote of dismissal or no confidence against their leaderships. Additionally, they note the absence of a system of fair and adequate remuneration for representatives of provinces and metropolitan cities, the persisting shortage of staff in local and regional authorities, and the existing threats and violence against elected officials.

1. L: Chamber of Local Authorities / R: Chamber of Regions.
EPP/CCE:Group of the European People's Party in the Congress.
SOC/G/PD: Group of Socialists, Greens and Progressive Democrats.
ILDG: Independent Liberal and Democratic Group.
ECR: European Conservatives and Reformists Group.
NR: Members not belonging to a political group of the Congress of Local and Regional Authorities of the Council of Europe

Therefore it is recommended, in particular, that Italian authorities reconsider the legal force of the Charter to make sure that local authorities can benefit from its protection. The national authorities are also invited to widen the scope of action of metropolitan cities and provinces, following the re-introduction of directly elected bodies. The rapporteurs also recommend ensuring fair and appropriate remuneration to elected officials of provinces and metropolitan cities and introducing a mechanism that strengthens legal action and extends the statute of limitations to provide better protection under criminal for elected representatives who are subject to attacks and aggression. Finally, the implementation of additional measures to enhance the capacity of local and regional governments in hiring highly qualified staff is recommended.

RECOMMENDATION 503 (2024)[2]

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

a. Article 2, paragraph 1.*b*, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1 relating to the Congress, stipulating that one of the aims of the Congress is "to submit proposals to the Committee of Ministers in order to promote local and regional democracy";

b. Article 1, paragraph 3, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1 relating to the Congress, stipulating that "The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure the effective implementation of the principles of the European Charter of Local Self-Government."

c. Chapter XVIII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;

d. the Contemporary Commentary by the Congress on the explanatory report to the European Charter of Local Self-Government adopted by the Statutory Forum on 7 December 2020;

e. the Congress priorities for 2021-26, in particular priority 6b which concerns the quality of representative democracy and citizen participation;

f. the Sustainable Development Goals (SDGs) of the United Nations 2030 Agenda for Sustainable Development, in particular Goal 11 on sustainable cities and communities and Goal 16 on peace, justice and strong institutions;

g. the Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;

h. Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, adopted on 21 March 2018;

i. Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities' activities, adopted on 4 April 2019;

j. Congress Recommendation 404 (2017) on the monitoring of the European Charter of Local Self-Government in Italy;

k. the Explanatory memorandum on the monitoring of the European Charter of Local Self-Government in Italy.

2. The Congress points out that:

a. Italy joined the Council of Europe on 5 May 1949, signed the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter") on 15 October 1985 and ratified it without reservations on 11 May 1990. The Charter entered into force in Italy on 1 September 1990.

b. the Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (hereinafter referred to as "the Monitoring Committee") decided to examine the situation of local and regional democracy in Italy in light of the Charter. It entrusted Andrew Leadbetter, United Kingdom (L, CRE/ECR) and Randi Mondorf, Denmark (R, GILD/ILDG), with the task of preparing and submitting to the Congress a report on local and regional democracy in Italy. The delegation was assisted by Prof Nikolaos Chlepas, member of the Group of

2. Debated and adopted by the Congress during the 46th Session on 26 March 2024, (see document CG(2024)46-13, explanatory memorandum), rapporteurs: Andrew LEADBETTER, United Kingdom (L, CRE/ECR) and Randi MONDORF, Denmark (R, GILD/ILDG)

Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat;

c. the monitoring visit took place from 9 to 12 October 2023. During the visit, the Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the visit is appended to the explanatory memorandum;

d. the co-rapporteurs wish to thank the Permanent Representation of Italy to the Council of Europe and all those whom they met during the visit.

3. The Congress notes with satisfaction that in Italy:

a. the Italian authorities gave consideration to the previous Congress Recommendation 404(2017) which recommended to “reintroduce direct elections for the governing bodies of provinces and metropolitan cities” and seem to continue giving meaningful consideration to this recommendation through ongoing legislative changes;

b. the revenues of ordinary regions and other local authorities are increasing;

c. the consultation of local authorities has reached a satisfactory level, also on financial matters, and seems to be developing positively;

d. some progress has been observed concerning staff, entailing new recruitments and perspectives for better qualified human resources in local and regional governments;

e. the introduction of the concept of “differentiated autonomy” for ordinary regions entails a right to equalisation measures and may reduce the fiscal gap between ordinary and special regions;

f. the equalisation system has been improved based on the estimation of standard needs and fiscal capacity, and on the increase of this fund envisaged for 2024;

g. the entry into force on 1 February 2024 of the Additional Protocol to the Charter on the right to participate in the affairs of a local authority, which was signed and ratified by Italy on 24 October 2023.

4. the Congress notes that the following points call for particular attention:

a. the Constitutional Court's case law does not recognise the legal force of the Charter, which means that local and regional authorities are deprived of the protection offered by the Charter;

b. the scope of action of metropolitan cities and provinces remains restricted despite the previous Congress Recommendation;

c. the lack of adequate and commensurate financial resources for provinces, in accordance with Article 9 of the Charter;

d. the possibility for provincial/metropolitan councils to formulate a vote of dismissal or no confidence against their president/mayor in order to strengthen the political accountability of presidents/mayors has not been introduced yet despite the previous Congress Recommendation;

e. elected officials of provinces and metropolitan cities do not receive fair and appropriate remuneration;

f. the lack of flexibility and discretion in the tasks assigned to municipalities by the central level, mainly due to overregulation and bureaucratisation;

g. while there have been positive developments recently in the potential for hiring new staff, a shortage of staff persists in local and regional authorities;

h. local and regional elected representatives are increasingly targeted by threats and pressures, undermining their ability to exercise their mandates;

i. the system of governance for the metropolitan area of the capital city Rome is obsolete notably due to the fragmentation of municipal structures and the persistent lack of coordination;

j. the three additional protocols to the European Outline Convention on Trans-Frontier Co-operation between Territorial Communities or Authorities have not been signed and ratified yet.

5. In light of the foregoing, the Congress requests that the Committee of Ministers invite the authorities of Italy to:

a. reconsider the legal force of the Charter, to ensure that Italian local authorities can benefit from the legal protection of the Charter;

b. widen the scope of action of metropolitan cities and provinces, once the reintroduction of directly elected bodies has taken place;

c. ensure adequate and commensurate financial resources to provinces, in accordance with Article 9 of the Charter;

d. Introduce the possibility for provincial/metropolitan councils to formulate a vote of dismissal or no confidence against their president/mayor in order to strengthen the political accountability of presidents/mayors, as already recommended in the previous Congress recommendation 404 (2017);

e. allocate fair and appropriate remuneration to elected officials of provinces and metropolitan cities;

f. undertake a reform on administrative simplification to tackle excessive bureaucracy and over-regulation to provide local authorities with greater freedom to adapt to local conditions and enable them to better implement delegated tasks;

g. introduce a mechanism that strengthens legal action and extends the statute of limitations to provide better criminal law protection for mayors who are subject to attacks and aggression from citizens in the exercise of their public duties (possibly considering the introduction of a specific type of offence for these actions);

h. implement additional measures to enhance the capacity of local and regional governments to hire highly qualified staff;

i. modernise the system of governance for the metropolitan area of the capital city Rome to be in capacity to address new challenges such as infrastructure and transportation issues, climate and demographic changes by developing collaborative forms of metropolitan governance involving various stakeholders, including in particular local and regional authorities;

j. sign and ratify the three additional protocols to the European Outline Convention on Trans-Frontier Co-operation between Territorial Communities or Authorities in the near future.

6. The Congress calls on the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take account of these recommendations on the monitoring of the European Charter of Local Self-Government in Italy and the accompanying explanatory memorandum in their activities relating to this member State.

EXPLANATORY MEMORANDUM

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

1. In accordance with Article 1, paragraph 2 of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1 relating to the Congress, the Congress regularly prepares reports on the state of local and regional democracy in its member states and candidate countries. The monitoring missions of the Congress pursue the overall aim of guaranteeing that the commitments entered into by member states when ratifying the Charter are fully honoured.

2. Italy joined the Council of Europe on 5 May 1949. It is a founder member of the Organisation. It signed the European Charter of Local Self-Government (ETS No. 122, "the Charter") on 15 October 1985 and ratified it on 11 May 1990. The Charter entered into force in the Italian Republic on 1 September 1990. No "improper" reservation to any of its articles was formulated. On the other hand, Italy did not limit the scope of the Charter to a part of its territory or to a certain kind of territorial unit. Therefore, the Italian Republic belongs to the minority group of Council of Europe members whose acceptance of the Charter has been full, complete and without reservations. In this sense, at the time of the deposit of the instrument of ratification, the following declaration was made: "According to Article 12, paragraph 2 of the Charter, the Italian Republic considers itself bound by the Charter in its integrality."

3. In the domain of local and regional democracy, the Italian Republic, apart from the Charter, has also signed and ratified the following Council of Europe treaties: the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No.106), signed on 21 May 1980, ratified on 29 March 1985 and entered into force on 30 June 1985; the Convention on the Participation of Foreigners in Public Life at Local Level, (ETS No. 144), signed on 5 February 1992, ratified on 26 May 1994 and entered into force on 1 May 1997; and the Council of Europe Landscape Convention (ETS No. 176), signed on 20 October 2000, ratified on 4 May 2006 and entered into force on 1 September 2006. The rapporteurs welcome the recent ratification of Italy of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) on 24 October 2023 (Act n. 775), entered into force on 1 February 2024. On the other hand, Italy signed on 5 December 2000, but has not yet ratified: the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities of 9 November 1995 (ETS No.159), and signed on 27 June 2000, but has not yet ratified the European Charter for Regional or Minority Languages of 5 November 1992 (ETS No. 148). In addition, Italy has not yet signed the following Council of Europe treaties: Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation of 5 May 1998 (ETS No. 169) and the Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euro-regional Co-operation Groupings, of 16 November 2009 (ETS No. 206).

4. The present report on the application of the European Charter on Local Self-Governing follows Recommendation 404 (2017) which was adopted by the Congress at its 33rd Session in October 2017.

5. The Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government ("the Monitoring Committee") decided to examine the situation of local and regional democracy in Italy in the light of the Charter. It assigned Andrew Leadbetter, United Kingdom (L, CRE/ECR) and Randi Mondorf, Denmark (R, GILD/ILDG) with the task of preparing and submitting to the Congress a report on local and regional democracy in Italy. The official monitoring mission in Italy was carried out by the aforementioned rapporteurs. The delegation was accompanied by a representative of the Congress secretariat and was assisted by Prof Nikolaos-Komninos Chlepas (expert), a member of the Group of Independent Experts on the European Charter of Local Self-Government. The rapporteurs wish to express their thanks to the expert for his assistance in the preparation of this report. This group of persons will be hereinafter referred to as "the delegation".

6. The monitoring visit took place from 9 to 12 October 2023. During the visit, the Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the visit is appended to the explanatory memorandum.

7. The co-rapporteurs wish to thank the Permanent Representation of Italy to the Council of Europe and all those whom they met during the visit.

8. According to Rule 88.3 of the Rules and Procedures of the Congress of Local and Regional Authorities of the Council of Europe, the preliminary draft report was sent on 1 December 2023 to all interlocutors met during the visit for their comments and possible adjustments or corrections (hereinafter the “consultation procedure”). The present report is taking into account the comments received, which were considered by the rapporteurs before submission for approval to the Monitoring Committee.

2. INTERNAL AND INTERNATIONAL NORMATIVE FRAMEWORK

9. Italy has been a unitary parliamentary republic since 2 June 1946, when the monarchy was abolished by a constitutional referendum. The President of the Italian Republic (*Presidente della Repubblica*), currently Sergio Mattarella (since 2015), is Italy’s head of State. The President is elected for a seven-year term by a college comprising both chambers of the Italian parliament, together with three representatives from every region with the exception of the Valle d'Aosta region which has only one representative being the Italian region with the fewest inhabitants. The two-thirds majority required guarantees that the president is acceptable to a sufficient proportion of the populace and political partners.

10. The president may dissolve parliament either on his/her own initiative (except during the last 6 months of his/her term of office), having consulted the presidents of both chambers, or at the request of the government. He/she may appoint 5 lifetime members of the Italian Senate and appoint 5 of the 15 judges of the Constitutional Courtof Italy. He/she also appoints the President of the Council of Ministers of Italy, the equivalent of a prime minister. Whenever a government is defeated or resigns, it is the duty of the President of the Italian Republic, after consulting eminent politicians and party leaders, to appoint the person most likely to win the confidence of parliament; this person is usually designated by the majority parties, and the president has limited choice.

11. The Italian Parliament is bicameral and nowadays (following the constitutional reform by Act No. 1 of 2021, which came into force in 2022) comprises the Chamber of Deputies (400 deputies) and the Senate (200 senators). All members of the Chamber of Deputies (the lower house) are popularly elected via a system of proportional representation, which serves to benefit minor parties. A peculiarity of the Italian Parliament is the representation given to Italian citizens permanently living abroad: eight deputies and four senators elected in four distinct overseas constituencies Most members of the Senate (the higher chamber) are elected in the same manner, but the Senate also includes several members appointed by the President of Italy and former presidents appearing *ex officio*, all of whom serve life terms.

12. Both houses are officially organised into parliamentary groups. Each house also is organised into standing committees, which reflect the proportions of the parliamentary groups. However, the chairmanship of parliamentary committees is not the exclusive monopoly of the majority. Besides studying bills, these committees act as legislative bodies. The parliamentary rules have followed the United States’ model and have given the standing committees extensive powers of control over the government and administration.

13. The most important function of parliament is ordinary legislation. Bills may be presented in parliament by the government, by individual members, or by bodies such as the National Council for Economy and Labour, various regional councils, or communes. They can also be presented via petitions signed by 50,000 citizens of the electorate or through a referendum. Bills are passed either by the standing committees or by parliament as a whole. The Italian system is based on a “perfect bicameralism”, meaning that both chambers are equal in powers, competences, and prerogatives. Therefore, any law must be approved in both chambers, following a distinct and separate procedure, although there are occasions on which they meet in joint sessions (Article 55 of the Constitution of Italy).

14. In comparative rankings, Italian democracy has been described as a "flawed democracy", ranking 31st best in the world,[3] and was characterised by a consensual political culture for decades after the war. Nevertheless, visible tendencies towards bipolarism and majoritarianism emerged in the 1990s, when the old parties and party system "collapsed."[4] In 2023, Freedom House labelled Italy a "free country", and assigned it a very high score (92/100).[5]

15. According to the Rule of Law Index[6] of the World Justice Project (2023) Italy ranked 31st in the world with a score of 67/100. It was assigned a score of 56/100 in terms of perception of corruption and was ranked 41st in 2022 (better than 8 other EU countries but worse than 18 other EU countries),[7] while according to the risk index "global corruption index" Italy had a score of 29,83/100 ("low risk" in 2022) and ranked 36th in the world. This could also explain why trust in government was only 35,4% in Italy, a percentage that was one of the lowest among the EU27 in 2021, according tothe Organisation for Economic Co-operation and Development(OECD).[8]

2.1 Local government system (constitutional and legislative framework, reforms)

16. In Italy, there are three main types of local governments recognised under Article 114 of the Constitution of Italy, which make up, together with the 20 regions[9] and the State, the Italian Republic. These are the 7904 municipalities (*comuni*), 14 metropolitan cities (*Città Metropolitana*) and 92 provinces (*provincia*). The basic unit of local government is the municipality.

17. Municipalities, provinces, metropolitan cities and regions are autonomous entities with statutes, powers, and functions set out in according to constitutional principles. Even if this provision seems to suggest that the constituent parts of the Italian Republic are on an equal footing, the Constitutional Court of Italy has emphasisedthe special role of the State vis-à-vis other levels of government.[10] While Article 114 ensures that the three main types of local government enjoy autonomy within constitutional principles, it does not go any further in regulating them.

18. Article 117, paragraph 2(p) of the Italian Constitution, however, determines that national government shall establish the rules regarding the "electoral legislation, governing bodies and fundamental functions of the municipalities, provinces and metropolitan cities". The relevant law consolidating pre-existing rules is Legislative Decree No 267/2000. The regional legislator can become active in a complementary manner based on the residuary power under Article 117 paragraph 6. This is true, however, only for the 15 regions with ordinary statutes (hereinafter, "ordinary regions"). The five regions with special statutes (hereinafter special regions) are allowed to regulate their local governments in their autonomy statutes and, in more detail, through ordinary regional legislation.

19. At the sub-regional level, in order to facilitate the social and economic integration of urban agglomerations, there are the metropolitan cities. While their establishment had been discussed at least since the 1950s, fierce resistance, especially from the regions, had made their actual creation impossible. Eventually, the constitutional reform of 2001 introduced the metropolitan cities into the Italian Constitution. It took over a decade to clarify how they would operate and to overcome resistance from other levels of government. The Ordinary Law No. 56/2014 ("Delrio Law") finally established the metropolitan cities.[11]

20. The third type of local government that is recognised under Article 114 as a constituent unit of the Italian Republic is the *province*. Provinces are intermediate entities between the regions and the

3. According to the Global Democracy Index 2022, Italy has a score of 7,68. For countries sharing land borders with Italy: Switzerland 8.90 and Austria 8.07 ("full democracies"); France. 7.99 and Slovenia 7.54 ("flawed democracies") available at: https://www.economist.com/graphic-detail/2022/02/09/a-new-low-for-global-democracy, accessed 7 February 2024.
4. Bull M. J. and & Pasquino, G (2018), "Italian Politics in an Era of Recession: The End of Bipolarism? South European Society and Politics, Vol. 23, No. 1, pp. 1-12.
5. Available at: https://freedomhouse.org/countries/freedom-world/scores, accessed 7 February 2024.
6. Available at: https://worldjusticeproject.org/rule-of-law-index/global/2023/, accessed 7 February 2024.
7. Available at: https://www.transparency.org/en/cpi/2022, accessed 7 February 2024.
8. Available at: https://data.oecd.org/gga/trust-in-government.htm, accessed 7 February 2024.
9. There are 15 regions with ordinary statute and 5 regions with special statute, recognised under Article 116 of the Italian Constitution, namely Sardinia, Sicily, Trentino-South Tyrol, Aosta Valley and Friuli-Venezia Giulia. Special mention should be made for the two autonomous provinces of Trento and Bolzano in the Trentino-Alto Adige Autonomous Region.
10. Italian Constitutional Court, Judgment No. 274/2003.
11. Boggero, G. (2016), "The Establishment of Metropolitan Cities in Italy: An Advance or a Setback for Italian regionalism?" *Perspectives on Federalism* Vol. 8, E-1, E-5.

municipalities. Similar to second-tier local governments in other countries, the main function of the provinces is the coordination of policies and public services.

21. Apart from these three main types enshrined in the Italian Constitution, Legislative Decree No 267/2000 mentions additional types of local governments. The unions of municipalities (*unioni di comuni*) are composed of two or more municipalities and are an institutional form of cooperation in order to jointly exercise certain functions.[12] A similar rationale is behind specific local government entities for particular geographical areas, namely the mountain communities (*comunità montane*) and the island communities (*comunità isolane*).

22. Local finance is the subject of Article 119 of the Italian Constitution which provides, inter alia, that local authorities "shall have revenue and expenditure autonomy, subject to the obligation to balance their budgets" (paragraph 1); that they will have "independent financial resources and that they will levy taxes and collect revenues of their own" (paragraph 2); that an equalisation fund will be set up (paragraph 3); and that local authorities will have their own assets" (paragraph 6).

23. Apart from constitutional provisions, the organisation, competences, finances and operational aspects of local authorities are regulated by a comprehensive set of laws and regulations. The most important piece of legislation on local authorities is the "Unified Laws on local authorities" ("*Testo Unico delle leggi sull´ordinamento degli enti locali*") approved by Legislative Decree No 267 of 18 August 2000. This key legal rule has been amended many times since its enactment, but it still is the backbone of the Italian legal framework on local authorities.

24. Local government reform in Italy has included several operational innovations, while territorial reforms and especially the mergers of municipalities and provinces were rather limited by comparison to other countries. The most important reform in many years was embodied in the "Delrio Act" of 2014[13] which initiated a process of overall revision of the system of local authorities in Italy, but the main orientations of this law were highly controversial.

25. The Delrio Act eliminated the traditional construct of the province as an entity representative of a "local community", whose members elect the running organs. This law abolished the direct popular election to provincial bodies and in particular ruled that the president of a province should no longer be elected by the *consiglio* of the province, but by the mayors and by the members of the city councils of said province (Article 58). The provincial council is also elected in a "secondary election" by a restricted vote of the mayors and of the members of the city councils of the province. The underlying idea is that the province does not represent the citizens living in the province, but the bodies and institutional organs of the local authorities in the province.

26. The Delrio Act provided the final impulse to establishing the metropolitan cities as true operational institutions, and each one is supposed to replace a pre-existing province. All the powers, resources, assets, competences and powers are transferred to the metropolitan cities. Metropolitan cities (and provinces alike) are conceived as entities of "vast extension" (*area vasta*), which come close to types of intermunicipal co-operation (IMC) bodies, with important functions in the areas of strategic planning and promotion/co-ordination of public services.

27. These new types of provinces and metropolitan cities were not compatible with the Italian Constitution; therefore, pertinent amendments were proposed that were finally rejected by the Italian people in a 2016 referendum. Provinces and metropolitan cities maintained their status as components of the Republic, as autonomous entities with their own powers and functions.

28. Nevertheless, the governing bodies of the metropolitan cities are not elected by the people in direct or indirect elections Thus, and contrary to what the Delrio Law provided for the provinces, the presidents of such metropolitan cities or "metropolitan mayors" are not elected by the mayors and by the members of the local councils present in the province: the mayor of the city-capital of the former province (*capoluogo*) becomes *de jure* the metropolitan mayor; that is, the key administrator of the metropolitan city. In this way, the electorate of one city, the *capoluogo*, also elects the president of the whole metropolitan city, while both the electorates of the rest of the territory of the metropolitan city and their elected representatives are excluded from this election. It should be noted that the Italian

12. Italian Constitutional Court, Judgment No 50/2015.
13. "Delrio Law", No. 7 April 2014, No. 56 on Provisions on metropolitan cities, provinces, unions and mergers of communities.

Constitutional Court, in its judgment 240/2021, identified problems with this situation. The court also found that it violates Article 1 of the Italian Constitution and called on the legislature to address the issue. This is currently being done through the reform law on provinces and metropolitan cities.

29. The Delrio Act, along with the regulation of the respective bodies, also identified the so-called fundamental functions of both metropolitan cities and provinces, leaving it to the legislative power of the regions to regulate the allocation of administrative functions other the fundamental ones among the local authorities in their respective territories. Following the approval of this Act, the regions initiated a broad and diverse process of reorganising the functions of the provinces. However, the unfavourable outcome of the referendum of 2016 on the proposed constitutional reform, which included the removal of the reference to the provinces from the constitutional text, led to a situation of uncertainty on the role of the provinces themselves, which maintained their status within the Italian Constitution.

30. This context gave rise to a new debate on the future of the provinces, culminating in the proposal to restore stability to the provincial level of government by restoring the direct election of its bodies. To this end, several bills of parliamentary initiative were presented. At the 1st Permanent Commission of the Italian Senate, where the initiatives are presented, a select committee was set up that drew up a Unified Text ("New regulations on fundamental functions, organs of governance and electoral system of the Provinces and Metropolitan Cities and other provisions relating to Local Authorities"), which was then adopted by the 1st Commission.

31. Regarding this Unified Text, the regions consider the restoration of the direct election of the bodies of provinces and metropolitan cities to be entirely acceptable but express strong perplexity about the structure of functions and the transfer of financial and human resources contained therein. As interlocutors from the Emilia-Romagna Region stressed to the rapporteurs, it should be recalled that the Conference of Regions and autonomous Provinces has repeatedly drawn attention in recent years to the need for a unified approach to the regulation of territorial governance, based on greater sharing with the regions from the start of the reform process.

32. A key objective of the Italian National Recovery and Resilience Plan (NRRP) is the reform of the subnational fiscal framework (1.14): this reform consists in the conclusion of the fiscal federalism provided for by Law No. 42/2009, to improve the transparency of fiscal relations between the different levels of government, allocate resources to the subnational government (SNG) according to impartial criteria and encourage efficient use of resources. The recent fiscal reform (Law No. 111/2023) identifies the full implementation of fiscal federalism as one of the key principles for modernising the Italian public finance system together with specific measures for regional and local taxes. In detail, Article 8 of Law No. 111/2023 defines the removal of the regional tax on productive activities (IRAP) in order to reduce distortions due to the current IRAP system and keep the public budget balanced. The cancellation of IRAP is expected to be implemented by substituting it with a corporate income tax (CIT, or IRES in the Italian wording) surtax. Moreover, the reform of IRAP will be implemented by guaranteeing the financing of regional healthcare needs, which are currently financed with IRAP.

33. Article 13 of Law No. 111/2023 defines the principles for the full implementation of regional fiscal federalism, that is, to redefine and rationalise regional taxes, and to simply and organise regional fiscal federalism procedures and the corresponding legislative framework. Article 14 of Law No. 111/2023 defines the revision of the tax system of municipalities, metropolitan cities and provinces in order to strengthen local financial autonomy; reduce tax evasion and tax avoidance; redefine and rationalise local taxesand simplify tax obligations, reduce duplications and improve transparency. The "Delegation Law" (No. 111/2023) also sets specific targets/milestones:

- M1C1-119: to implement fiscal federalism for the regions with ordinary statute, as established by Legislative Decree n. 68/2011. To be achieved by 2026;
- M1C1-120: to implement fiscal federalism for Provinces and Metropolitan Cities, as established by Legislative Decree No 68/2011 (Articles 1-15) to be achieved by 2026.

34. The full implementation of regional fiscal federalism (Article 13) should be promoted to redefine and rationalise regional taxes; furthermore, to simplify and organise regional fiscal federalism procedures and the corresponding legislative framework. The law (Article 14), also provides for the revision of the tax system of Municipalities, Metropolitan Cities and Provinces with the aim of:

- strengthening local financial autonomy;
- reducing tax evasion and tax avoidance;

- redefining and rationalising local taxes;
- simplifying tax obligations, reducing duplications, and improving transparency.

2.2 Status of the capital city

35. Rome constitutes a *comune speciale* (meaning that according to Article 114 ot the Italian Constitution, its “status is regulated by State law”), named "*Roma Capitale*" (Article 114 of the Constitution). Since 1972, the city has been divided into administrative areas, called *municipi* (until 2001 there were called *circoscrizioni*). They were created for administrative reasons to increase decentralisation in the city. Each municipio is governed by a president and a council of 25 members who are elected by its residents every 5 years. The *municipi* were originally 20, then 19 and in 2013, their number was reduced to 15.

36. Rome is the principal town of the Metropolitan City of Rome, operative since 1 January 2015. The metropolitan city replaced the old *provincia di Roma*, which included the city's metropolitan area and extends further north to Civitavecchia. The Metropolitan City of Rome is the largest by area in Italy. At 5352 km^2 (2066 sq. mi), its dimensions are comparable to the region of Liguria. Moreover, the city is also the capital of the Lazio Region.

37. Rome was given a specific status by Act 42/2009, supplemented by a legislative decree approved in October 2010. These legislative arrangements established the “*Roma Capitale*”, which substituted in technical terms the precedent “Municipality” of Rome (*Comune di Roma*), although the boundaries and all constituent elements of the previous local bodies were respected. Rome can thus be defined as a local authority enjoying a specific autonomy. The capital city has more competences than the other municipalities, specific provisions for fiscal and budgetary matters, and a deeper administrative and organisational autonomy.

38. The *Statuto di Roma Capitale* lays down specific provisions on the internal territorial and administrative structure of the city. Currently, the internal organisation of the city of Rome is two-fold. At the central level, there is a clear separation between the “executive” and the “deliberative-normative” bodies. For respect to the former, there is a mayor (*Sindaco*) and a team of city ministers (*assessori*), who are appointed and removed by the mayor. The deliberative body is the “assembly of the Capital” (*assemblea capitolina*). It should be noted that the Mayor of the City of Rome is at the same time the “metropolitan mayor” (*sindaco metropolitano*) of the Metropolitan City Rome.

39. Apart from this particular legislative arrangement, Rome is the object of specific references in different laws and regulations, for instance in the 2009 Fiscal Federalism Act. Rome can, in the coming years, benefit from €2 billion from the Jubilee Fund and €10 billion investment for EXPO 2030, as the Vice-Mayor of Rome pointed out to the rapporteurs. However, it is obvious that a systematic reform approach concerning the metropolitan governance of the Rome metropolitan area is still not in place.

2.3 Legal status of the European Charter of Local Self-Government

40. The legal status of said Charter within the domestic legal system of Italy has been the subject of controversy, especially in light of certain judgments of the Constitutional Court of Italy. Italy is a country with a classical dualist approach to international treaties. Article 117 of the Italian Constitution provides that the legislative powers of the Republic shall be exercised “with limitations deriving from EU-legislation and international obligations”. Treaties occupy a sort of intermediate position between the constitution and regular legislation and, as a rule, a treaty must be “received” in the internal legal order, and the legislative enacts legal rules by which said treaty crystallises into operational legal rules. This makes it difficult, from a methodological point of view, to invoke “directly” in the courts (especially in the administrative courts) the wording or provisions of a given treaty. On the other hand, under Italian constitutional law, a court cannot disapply a given piece of legislation on the ground that it could be contrary to the constitution or to a regular international treaty: the court is under the obligation to refer to the Constitutional Court, which will rule on that question. This feature hampers dramatically the possibility of invoking the direct application of the Charter in a given administrative litigation, where local authorities would be parties.

41. In this context, the Charter is generally categorised as a binding international treaty, to which Italy has made no reservation or further scope of limitation. The Charter is conceptualised as an

"interposed rule" (*norma interposta*), between the Italian Constitution and ordinary legislation (Article 117 paragraph 1 of the Constitution). In its ruling No. 50/2015 (dealing precisely with the Delrio Act), however, the Constitutional Court of Italy ruled that, in the framework of the specific legal problems raised by the constitutional question, the Charter was a sort of guideline, or a guiding political document (*un mero atto di indirizzo*), and was too vague to be taken as reference for an abstract control of the "legitimacy" of a given piece of national legislation.[14] In this case, the Constitutional Court rejected an appeal by four Italian regions (Lombardia, Veneto, Campania, Puglia), arguing that the Delrio Law that eliminated the direct election of provincial bodies would be violating both the constitution and the Charter. In its 50/2015 decision, the Constitutional Court proceeded to a constitutionally compliant interpretation, formulating the thought that what is sought is the effective representation of local societies. This would be indeed ensured in the case under consideration, since the term of office of the members of the provincial assemblies expires together with their term of office as mayors or municipal councillors in the municipalities of origin, according to the *simul stabunt*, *simul cadent* principle (Article 1, paragraphs 65 and 69 of the Delrio Law).[15]

42. This case law of the Constitutional Court has raised serious concerns in the Congress. Aspirations that this position of the Constitutional Court referred only to problems raised in the specific context of the case and the specific questions that it had to answer were not confirmed in the subsequent years. On the contrary, five international treaties were evaluated by the Constitutional Court[16] concerning their character as "interposed rule" (*norma interposta*) between the Italian Constitution and ordinary legislation. While four treaties have passed the test of interposability, the European Charter of Local Self-Government was rejected.[17] The Constitutional Court has denied that the Charter is made up of rules that can rise to the rank of interposition, thus providing an important differentiation between the rules of an international treaty that can be interposed and those that cannot benefit from similar parametric treatment. The Constitutional Court denies this quality of interposition not necessarily to all rules included in the Charter but to those that are characterised by a purely definitional, programmatic and, in any case, generic nature. The Constitutional Court also observes that the Charter itself states, with a general provision, that the basic competences of local communities are established by the constitution or by law, thus referring the definition of the general framework to the national legislation of competences and thus asserting its "nature of a document of mere guidance".[18]

43. Conversely, therefore, according to this case law, those provisions contained in international treaties that are characterised by specificity, and which leave no margin for discretion to the contracting States possess the requirements for interposability.[19] Such provisions, nevertheless, are also contained in the Charter. For example, Article 3 paragraph 2, Article 4 paragraph. 6, Article 5, Article 6 paragraph 2, Article 8 paragraph 3, Article 9 paragraphs 3, 4, 5, 6 and 7, and Article 10 paragraph. 2 (self-executing). Like most legal texts (and especially constitutional texts), these provisions of the Charter include undefined legal terms that are subject to interpretation, but this does not make them "purely definitional, programmatic, or generic". In addition, many of these provisions touch upon subjects and topics that are not covered by articles of the constitution. Therefore, it should be recognised that at least the aforementioned paragraphs of the Charter, have the quality of interposition, according to the constitution (Article 117).

14. Spadaro, A.: "La sentencia const. N.50/2015. Una novità relevante: talvolta la democrazia è un optional". Rivista Della Associazione Italiana dei Costituzionalisti (AIC), No. 2/2015, pp. 1-27; Lucarelli, A.: "La sentenza della Corte costituzionale n. 50 del 2015. Considerazioni in merito all'istituzione delle città metropolitane". Federalismi.it, No. 8/2015, pp. 2-7.
15. Luciano, V. (2015), "La legge Delrio all'esame della Corte: ma non meritava una motivazione più accurata?", Quaderni Costituzionali, No. 2/2015, pp. 393–396; Mone D. , La sentenza della Corte costituzionale No. 50 del 2015 e la Carta europea dell'autonomia locale: l'obbligo di elezione diretta tra principi e disposizioni costituzionali, 11 luglio 2015: http://www.forumcostituzionale. it/wordpress/wp-content/uploads/2014/12/nota_50_2015_ mone.pdf, accessed 7 February 2024.
16. The Kyoto Protocol additional to the United Nations Framework Convention on Climate Change; the United Nations Convention on the Rights of Persons with Disabilities; the United Nations Convention on the Rights of the Child; the European Convention on the Exercise of the Rights of the Child, regarding the protection of minors; the European Charter of Local Self-Government.
17. Fusco, A. (2020), "Il Mito di Procruste. Il problema dell'interposizione delle norme generative di obblighi internazionali nei giudizi di legittimità costituzionaleser, *Rivista AIC*, No: 4/2020, 23/10/2020; Ser. Matarazzo, Corte costituzionale n. 33/2019 e gestione associata : verso il superamento dell' obbligatorietà per i piccoli comuni? Il Piemonte delle Autonomie, Anno VI, Numero 2- 2019.
18. Constitutional Court, N. 33/2019. See the comments of Alessandro Morelli Obbligatorietà delle forme associative dei Comuni e visione congiunturale delle autonomie locali, Le Regioni Fascicolo 2/2019, marzo-aprile,pp. 523-532.
19. Ales. Fusco, op.cit.

2.4 Previous Congress reports and recommendations

44. During the previous Congress' monitoring of local and regional democracy in Italy in 2017 the rapporteurs drew attention to issues that require further improvement for the optimal functioning of local government concerning:[20]

a. the inadequate financial resources available to local authorities, particularly provinces, to accomplish their tasks, due to the sharp decrease in their own revenues and in State transfers, in addition to budget cuts (Article 9, paragraphs 1 and 2, of the Charter);

b. the fact that, in practice, local authorities are not consulted regarding the adoption of the budget, in particular in case of the implementation of budget cuts by the central government (Article 9, paragraph 6);

c. the uncertainty of the future situation regarding the provinces as a result of the rejection of the constitutional reform in December 2016;

d. the reduced ability of local authorities to employ qualified staff in order to carry out their responsibilities, as a consequence of the lack of career prospects, budget cuts and the cross-cutting "freeze" on hiring new staff that has been implemented in recent years (Article 6, paragraph 2);

e. the lack of appropriate remuneration or compensation for the elected representatives of provinces and metropolitan cities for the discharge of their duties, a situation that may also weaken the involvement of citizens in provincial politics (Article 7, paragraph 2);

f. the fact that the governing bodies of provinces and metropolitan are not elected by direct universal suffrage (Article 3, paragraph 2);

g. the limited responsibility of the presidents of provinces and mayors of metropolitan cities towards their respective deliberative bodies (Article 3, paragraph 2);

h. the weak financial situation of the regions having "ordinary status", in comparison with those having "special status";

i. the inefficiency of the equalisation system for smoothing out the differences in financial resources among regions (Article 9, paragraph 5).

45. In light of the above, the Congress recommends that the Committee of Ministers call upon the Italian authorities to:

a. reconsider, during consultations, the criteria and methodology applied to the calculation of the budget cuts and lift financial constraints imposed on local authorities, in particular in the provinces, to ensure that their resources are commensurate with responsibilities;

b. ensure that local authorities are effectively consulted, in law and in practice, through representatives of national associations, on financial matters which concern them directly;

c. reconsider the policy of gradually downsizing and abolishing provinces by restoring their competences and providing them with the necessary financial resources with which exercise these competences;

d. strengthen the process begun in June 2017 in relation to local human resources and the possibility of new recruitment, so that local authorities can employ the highly qualified staff that are essential to properly discharge their responsibilities;

e. establish a system of fair and appropriate remuneration of the elected representatives of provinces and metropolitan cities for the performance of their duties;

20. Congress of Local and Regional Authorities (2017), "Local and regional democracy in Italy", CG33(2017)17final, Monitoring Committee, Council of Europe Publishing, Strasbourg.

f. reintroduce direct elections for the governing bodies of provinces and metropolitan cities;

g. introduce, in the provincial/metropolitan councils, the possibility to propose a vote for the removal or censure of their president/mayor in order to strengthen the political accountability of the latter;

h. revise the financial rules and principles of the regions having "ordinary status" in order to strengthen their fiscal autonomy and increase the proportion of their "own revenues";

i. revise the current formula of the equalisation system in order to smooth out the differences in financial resources between of the regions, based on the principle of territorial solidarity;

j. sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

3. HONOURING OF OBLIGATIONS AND COMMITMENTS: ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY ON THE BASIS OF THE CHARTER (ARTICLE BY ARTICLE)

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

Article 2 – Constitutional and legal foundation for local self-government
The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

46. According to the Contemporary Commentary (2020) to the Charter, Article 2 requires the parties to recognise "the principle" of local self-government, which means it is deemed sufficient to recognise the core elements of local self-government in written rules, without the need for detailed regulation. This raises the question of what those "core elements" are. In this connection, a key role is played by the preamble and Article 3 of the Charter, both of which refer to the aspects of local self-government that have always been considered the essential features of this concept in the modern European tradition. As stated in the preamble, these core elements are: a) "local authorities endowed with democratically constituted decision-making bodies"; b) "wide degree of autonomy with regard to their responsibilities"; c) "ways and means by which those responsibilities are exercised and the resources required for their fulfilment". Therefore, to assess compliance with Article 2, it would be necessary to check not only the formal recognition of the principle in domestic legislation, but also whether those core elements are enshrined in that legislation.

47. As for the sources of law where the principle of local autonomy must be enshrined, the Charter establishes two levels of recognition. The first is "domestic legislation", a concept that must be construed as equivalent to written parliamentary legislation ("acts" or "statutes"). This level of recognition is obligatory. The second level consists in the recognition of the principle of self-government in the constitution. This is "further desirable" by the explanatory report to the Charter, but it is to be achieved "where practicable".

48. The Italian Constitution includes (in the part section on "Fundamental Principles") Article 5: "The Republic, one and indivisible, acknowledges and promotes local self-governments, and shall implement the greatest degree of administrative decentralization in services which depend on the State; it shall adapt the principles and methods of law-making to the requirements of autonomy and decentralization". In other words, Italy is not a federal but a unitary country that at the same time is committed to adapting principles and ways of law-making to the requirements of autonomy and implementing the greatest degree of decentralisation.

49. Title V of the Constitution regulates the status of regions, provinces and municipalities. Article 114 makes clear that the Republic, albeit "indivisible" (Article 5), is composed of municipalities, provinces, metropolitan cities, regions, and the State. The four types of local and regional entities are autonomous, "having their own statutes, powers and functions in accordance with the set of principles set forth in the Constitution". In this sense, the case-law of the Italian Council of State, which is the highest body in the administrative jurisdiction, has established that municipalities and provinces enjoy

full “administrative” autonomy, as opposed as the autonomy enjoyed by the regions, which is a “political” autonomy. The latter includes an important share of legislative powers and is thoroughly regulated in constitutional law. Without having the status of *länder*, states, or cantons in federal republics, the Italian regions are much more autonomous than entities of local/regional self-government and will therefore be dealt with in a different part of this report.

50. The constitution also refers (Article. 117 paragraph 6) to regulatory powers of municipalities, provinces, and metropolitan cities: “as to the organisation and implementation of the functions attributed to them”. Furthermore, concerning administrative functions, Article 118 paragraph 1 establishes the principle of subsidiarity, and pertinent tasks and responsibilities are attributed to the municipalities, “unless they pertain to the provinces, metropolitan cities and regions or the State, under the principle of subsidiarity, differentiation and proportionality“. Generally speaking, the allocation of administrative functions to bodies superordinate to the municipality takes place “when it is necessary to ensure their unitary exercise”.

51. The principle of differentiation is also reflected in the different statuses of regions and two autonomous provinces established in the Constitution. Article 116 paragraph 1 provides that five regions (Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige/Südtirol and Valle d’Aosta/Vallée d’Aoste) shall have special forms and conditions of autonomy under the special statutes adopted by constitutional law; furthermore, that the Trentino-Alto Adige/Südtirol Region is composed of the autonomous provinces of Trent and Bolzano. Differentiation of autonomies in an asymmetric way can also be the result of agreements between other regions (the 15 regions without special status) and the State providing for additional special forms and conditions of autonomy (Article 116 paragraph 3, limiting this possibility to subjects of concurrent legislation; to the organisational requirements of the justice of the peace, to general provisions on education, and to the protection of the environment/ecosystem/cultural heritage concerning subjects of exclusive legislation according to Article. 117). Differentiation has also recently been provided for islands in Article 119 paragraph 6 of the constitution, stating that the Republic “recognises the distinctiveness of its islands and shall promote the necessary measures to eliminate the disadvantages associated with insularity”.[21]

52. Next to “a wide degree of autonomy with regard to their responsibilities” as a core element of the principle of local government, the Contemporary Commentary to the Charter refers to the core element of “ways and means by which those responsibilities are exercised, and the resources required for their fulfilment”. In fact, the constitution refers to “the requirements of autonomy and decentralisation” (Article 5), and to the principle that “administrative functions shall pertain to the Municipalites” unless they pertain to higher levels according to the principles of subsidiarity, differentiation, and proportionality (Article 118 paragraph 1, see above).

53. Concerning the resources required for the fulfilment of responsibilities, Article 119 provides that “Municipalities, provinces, metropolitan cities and regions shall have income and expenditure autonomy” (paragraph 1); furthermore, that they shall have independent financial resources, and they “shall set and levy taxes and collect income of their own”, while in addition they “share in the revenue from State taxes related to their respective territories” (paragraph 2). Revenue of local and regional authorities should enable them to “fully finance the public functions which pertain to them” (paragraph 4). They also have their own assets, “which are allocated to them pursuant to general principles set forth in State legislation” (paragraph 7). The constitution does not, however, explicitly mention the human resources necessary to the fulfilment of their public functions.

54. The Constitution does not make any reference to the other core element of the principle of local government, according to the Contemporary Commentary to the Charter, namely that local authorities should “be endowed with democratically constituted decision-making bodies” (see above). Concerning the regions, it only refers to the president of the regional cabinet who “shall be elected by universal and direct ballot, unless the regional statute establishes otherwise” (Article 122, paragraph 5), while according to the same article (paragraph 1): “the electoral system and the cases of ineligibility and incompatibility of the President, the other members of the Regional Cabinet and the Regional councillors shall be established by a regional law in accordance with the fundamental principles set forth by a law of the Republic, which also establishes the length of elective offices”.

21. Constitutional Law of 7 November 2022, No. 2, in Official Gazette No. 267 of 15 November 2022, provided, by Article 1, paragraph 1, for the introduction of this paragraph.

55. The democratic constitution of local authorities is regulated by “Testo Unico”, which is the most important piece of legislation on local authorities (“Unified Laws on local authorities"), enacted by Legislative Decree No. 267 in 2000[22]. Articles 71 to 75 of *Testo Unico* regulated the election system, providing for direct election by universal vote of councils and mayors respectively, and presidents in municipalities and provinces. In 2001, the constitutional reform added the metropolitan cities to the entities of which the Italian Republic is constituted. Article 114 enshrines the regions, metropolitan cities, provinces and municipalities in the constitution, placing them next to the State, as constituent parts of the Republic. In 2009, a new framework law initiated the transformation of the country towards more federalism, as a “regionalised country”.

56. In 2014, Law No. 56/2014 (“The Delrio Law”) introduced several profound changes concerning the provinces and the metropolitan cities presented in part 2.1. of this report. These changes included the abolition of the system of direct election in the provinces. In December 2016, a relevant constitutional reform was rejected by referendum. This frustrated, inter alia, the transformation of the Senate into a consultative body representing regional governments and the removal of the level of provinces – the second tier of government between the regions and the municipalities. In addition, the failure of constitutional reform meant that the system of direct election in the provinces was violating the (unchanged) constitution. Therefore the Constitutional Court, more recently in Judgment No. 240/2021, called on the legislature to put in place an intervention aimed at overcoming the current elective system of the metropolitan body, which was deemed not to be following the constitutional canons of the exercise of political-administrative activity. In particular, the Constitutional Court noted that “the system currently provided for the designation of the metropolitan mayor is not in tune with the coordinates obtainable from the constitutional text, with regard both to the essential content of the equality of the vote, which “reflects the equal dignity of all citizens and [...] also contributes to connote as fully corresponding to popular sovereignty the investiture of those who are directly called by the electoral body to hold representative public office” (Judgment No. 429 of 1995), as well as to the absence of suitable instruments to guarantee “mechanisms of political accountability and the related power of control of local voters” (Judgment No. 168 of 2021)."

57. The provinces were not abolished but their new election system was maintained up to the times of the 2023 monitoring mission. This means that the Italian authorities had not followed, up to the point, the suggestion of Recommendation 404 (2017) to re-introduce direct elections for the governing bodies of the provinces and the metropolitan cities. In the of the Contemporary Commentary (see above), a core element of the principle of local self-government, namely the democratic constitution of decision-making bodies, would still be missing in the cases of provinces and metropolitan cities. Yet, high-ranking Italian interlocutors have expressed their anticipation that the re-introduction of direct elections for provinces and metropolitan cities is only a matter of time because relevant bills are being processed in the parliament and a sufficient level of consensus has been reached. Therefore, the rapporteurs consider that the Italian system complies with the requirements of Article 2 of the Charter, provided that the aforementioned legal re-introduction of direct elections in provinces and metropolitan cities takes place.

3.2 Article 3 – Concept of local self-government

Article 3 – Concept of local self-government

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

3.2.1 Article 3.1

58. Local authorities have the legal right of self-government (or “autonomy”), including the power to regulate and manage a substantial share of public affairs under their own responsibility and in the

22. The non-official translation provided to the rapporteurs included changes made by the Decree Law of 4 May 2022, No 41, which laid out: "Urgent provisions for the contextual conduct of local elections and referendums provided for in Article 75 of the Constitution to be held in the year 2022, as well as for the application of operational, precautionary and security arrangements for the collection of the vote” (published in the *Official Gazette of the Italian Republic* No. 103 of 4 May 2022).

interests of the local population. As the Contemporary Commentary to the Charter points out, this legal right is fully protected by the Charter (see Article 11: right of recourse to a judicial remedy). Local authorities should also be able to exercise this legal right to self-government effectively through the proper institutional and regulatory means provided for in other articles of the Charter (Article 9: adequate financial resources; Article 6: organisational and human resources, etc.).

59. Local governments should regulate and manage a "substantial share of public affairs", but the traditions of the Parties to the Charter regarding matters considered to be the natural or inherent preserve of local authorities differ greatly, depending on their constitutional frameworks. The Contemporary Commentary emphasises, that restricting their sphere of action would risk relegating them to a marginal role, but it is accepted that the Parties may wish to reserve certain functions (such as policing or higher education) to central government. Accordingly, the Charter grants States a certain amount of discretion in terms of setting "the limits of the law" and identifying local authorities' scope of action.

60. However, the Charter also stresses that the share of public affairs managed by local government should be "substantial", not residual. In other words, local entities should not be limited to secondary tasks or routine duties and should have a range of responsibilities with the possibility of drawing up and implementing appropriate and relevant local public policies for the benefit of the local population (in areas such as environmental protection, culture and education, basic infrastructure, urban development, housing and transport management).

61. Concerning the level of municipalities, the widely shared position is that they do have responsibility for a substantial share of public affairs; this was also affirmed, for instance, by the Italian section of the Council of European Municipalities and Regions (AICCRE). More precisely, according to Article 13 of Legislative Decree No. 267/2000, the administrative responsibilities of the municipalities include:

- social welfare, in particular, personal social services and community assistance;
- education, including school-related services such as canteens, school buses, assistance for the disabled, preschool childcare, and nursery schools;
- culture and recreation, including museums, exhibition halls, cultural activities and theatre;
- planning, including town planning, housing, and land registry;
- transport, in particular, running of local transport and maintenance of local roads;
- economic development, including drafting of plans for trade, planning, programming and regulation of commercial activities, as well as establishment and management of industrial and trade zones;
- the environment, including waste management;
- local police.

Deconcentrated/delegated responsibilities of the municipalities (Article 14 of Legislative Decree No. 267/2000) include:

- registry, including births, marriages and deaths;
- elections;
- military service;
- statistics.

Upland communities (*comunità montane*) have special competences in the following fields:

- planning, in particular enhancement of upland areas;
- joint discharge of some municipal responsibilities;
- tasks conferred on them by the EU or State or regional laws and policies;
- economic development, including multi-annual work and operation plans;
- instruments for pursuing socio-economic development objectives, including those laid down by the EU, the State, or a region.

62. At the infra-municipal level, large municipalities, with a population of at least 250000 can establish district councils (*circoscrizione di decentramento comunale*). These bodies, formally recognised in 1976, sometimes have an elected committee and a president. Districts' powers vary from one city to another. Their tasks can include schools, social services, and waste collection.

63. As the Contemporary Commentary points out, local authorities cannot regulate and manage a "substantial share of local affairs" effectively if the authorities are too small and/or are deprived of the

resources necessary to perform their tasks. Such entities would have the legal "right" but would lack the real "ability" to act, as required by the Charter. Mergers of municipalities may therefore be advisable (provided that the rules on boundary changes in Article 5 are complied with). Another possibility is the use of intermunicipal co-operation to achieve joint service provision (Article 10.1 see the corresponding comments in this report).

64. The number of municipalities has been relatively stable in Italy since Law No. 142/1990, which imposed a minimum threshold on the creation of a municipality (10000 inhabitants). Legislative Decree No. 267 of 18 August 2000, in Article 1 establishes that, except in the case of mergers between municipalities, no new municipalities may be established with a population of less than 10000 or whose establishment would result in other municipalities falling below this limit. However, the municipal level remains fragmented. While the average municipal size was around 7500 inhabitants in 2021 (below the OECD average of 10250 and above the EU average of 5960), the median size was close to 2410 inhabitants. Around 70% of Italian municipalities had fewer than 5000 inhabitants and 45% had fewer than 2000 inhabitants in 2021. To reduce fragmentation, Law No. 56/2014 encourages municipal mergers through central government and regional financial incentives.

65. Legislative Decree No. 267/2000 regulates the responsibilities of provinces. Since the entry into force of Law No. 56/2014, provinces are no longer an elective body and are considered territorial bodies for large areas (*Enti di area vasta*) with limited functions as required by large territorial areas and/or as requested to support local municipalities. According to Law No. 56/2014, functions previously undertaken by provinces have been mostly allocated to regions, and each region was expected to legislate on how they will be sustained.

66. Provinces have competence in the following areas (Article 1, paragraph 85, Law No. 56/2014):
- co-ordination of territorial planning as well as environmental protection, as pertains to provinces;
- transport planning within the provincial remit, authorisation and control of private transportation in agreement with regional programmes, as well as construction and management of the provincial road network and regulation of concerned road traffic;
- data gathering and analysis to provide technical and administrative support to local bodies;
- management of public education buildings and facilities (secondary education);
- control of discrimination in employment and promotion of equal opportunities at provincial level.

Moreover, provinces also cover the following fundamental functions (Article 1, paragraphs 86 – 88 Law No. 56/2014):
- strategic territorial development and management of services associated with the specific features of the territorial area;
- management of institutional relations with other ordinary provinces, independent provinces, regions with special status and territorial bodies of adjoining States that have mountainous territory;
- in agreement with municipalities, designing bids for proposals, monitoring service contractors and organising selective procedures of service procurement.

The regions may attribute more competences to the provinces in specific sectors that fall under their competences. In this sense, all Italian regions have passed laws implementing the Delrio Law, by assigning competences to Provinces or Municipalities.

67. Legislative Decree No. 267/2000 regulates responsibilities of metropolitan cities, to be understood following the amendments introduced with Law No. 56/2014. The law regulates the status and functions of Metropolitan cities, as well as their relationships with municipalities. Metropolitan cities are responsible for:
- strategic metropolitan development;
- integrated development and management of services, infrastructures, and communication networks that are of interest to the city;
- management of institutional relationships with other metropolitan cities both at the national and European level.

Metropolitan cities are responsible for the former responsibilities of provinces in their area:

- annual update and implementation of the triennial masterplan of the metropolitan area;
- general territorial planning, including communication, services, and infrastructure networks, and coordination and supervision of municipalities' functions that are part of the metropolitan area;
- giving structure to integrated public services and, in collaboration with interested municipalities, coordinating and managing procedures of local procurement (call for services, monitoring and selection criteria);
- transport mobility, ensuring compatibility and coherency of municipal urban planning at the metropolitan level;
- promotion and coordination of economic and social development activities, ensuring support to economic activities and innovative research that are in line with the metropolitan masterplan.

68. Municipalities do discharge a substantial share of public functions. Concerning Provinces and Metropolitan Cities, there is a need to widen their scope of action, especially because directly elected bodies will soon be re-introduced and Provinces/Metropolitan cities should become a fully-fledged second tier of local self-government. Therefore, the rapporteurs conclude that Italy partly complies with Article 3 paragraph 1.

3.2.2 Article 3.2

69. According to the Contemporary Commentary, Article 3, paragraph 2 is the main statement of the democratic principle in the provisions of the Charter. The right to self-government must be exercised by democratically constituted authorities. The concept of local autonomy does not involve the mere transfer of powers and responsibilities from central to local authorities but also requires local government to express the will of the local population.

70. Paragraph 2 also underlines the choice of representative democracy at the local level, in which decision-making power is exercised by councils or assemblies directly elected by the people. The representative assembly is the body required to deal with matters of greatest importance to the local community, such as budgetary or tax matters.[23] This principle determines that "the right of citizens to participate in the conduct of public affairs" mentioned in the preamble of the Charter is mainly exercised at the local level by electing local representatives. Local elections therefore play a key role in local democracy: local representatives must be directly elected in free elections held by secret ballot on the basis of direct, equal, universal suffrage. This provision means that indirect or second-degree elections of local councils or assemblies are inconsistent with the Charter.

71. Paragraph 2 defines executive organs as "responsible" to the elected councils or assemblies. According to the Contemporary Commentary, this "responsibility" does mean that the executive body, if not directly elected, must be elected (*de jure* or *de facto*) by the council. The responsibility of the executive towards the elected council seems to be the main form of "political" accountability, but this does not totally rule out the possibility of the recall of the directly elected executive by the people, as a form of direct political accountability. Also, the Venice Commission has considered the recall of mayors "an acceptable, though exceptional, tool" for political accountability.[24]

72. In Italy, the council can dismiss the mayor. In that case, the council is automatically dissolved. New elections are held, to elect both the mayor and the council. Scholars refer to this simultaneous dismissal as the *simul stabunt, simul cadent* principle. As for the procedure to dismiss the mayor, a vote of no confidence can be called. The motion of no confidence must be justified and signed by a least two-fifths of the assigned councillors, without taking into account the mayor. It must beput up for discussion no earlier than 10 days and no later than 30 days from its presentation. If the motion is approved in a public vote, the council is dissolved (Article 52, paragraph 2 Testo Unico Enti Locali or TUEL).

73. As for the municipal-level electoral system, since 1993 Italy has opted for a mayor (*sindaco*)–council (*consiglio*) system: municipal council members and the mayor are separately elected directly by citizens in elections normally held every 5 years (most recently in 2022). The mechanism of direct

23. See Recommendation 113 (2002) on relations between the public, the local assembly and the executive in local democracy (the institutional framework of local democracy).
24. Venice Commission, CDL-AD(2019)011, Report, and Opinion No. 910/2017 on the recall of mayors and local elected representatives.

election implies that the mayor is endowed with strong powers over municipal politics (a basic feature of presidential government), even though the council retains the power to remove the mayor through a vote of no confidence (a basic feature of parliamentary government).

74. There are two different systems for the election of the mayor and of the municipal council, depending on the number of inhabitants in the municipality. The first applies to municipalities with up to 15 000 inhabitants (referred to herein as “small” municipalities), while the second applies to those with more than 15 000 inhabitants (“large” municipalities). In small municipalities, the electoral system is quite simple: each mayoral candidate is associated with a list of candidates for the seats of the city council. Voters are entitled to vote for a mayoral candidate and may cast if they wish, a preference vote for a specific candidate for the city council. The mayoral candidate who gains the largest number of votes is elected mayor by relative majority.

75. A double-ballot majoritarian electoral mechanism is applied in the case of large municipalities. Each mayoral candidate is associated with one list (or a coalition of lists) of candidates for the post of councillor; in the first ballot, voters are entitled to vote for a mayoral candidate and, if they wish, for the associated list, or otherwise (at split vote is permitted). Each mayoral candidate must officially declare his/her affiliation to one or more lists running for election to the council. This declaration shall only be deemed valid if it coincides with similar declarations made by the candidates featured on the lists in question. In other words, a coalition of parties is offered to electors. The mayoral candidate who receives the absolute majority of votes is elected mayor on the first ballot.

76. If the mayoral candidate does not receive an absolute majority of votes in the first ballot, then a second ballot is held between the two candidates collecting the largest number of votes in the first round. During the second ballot, voters are entitled to vote for a mayoral candidate council members are elected in the first round. The candidate who ultimately obtains the absolute majority of votes is elected mayor.

77. The mayor is usually a strong political leader. Very often election as a mayor, especially in large municipalities, is the first step of a national political career. Sometimes, well-known politicians engage themselves in the campaigns to become mayors of big cities.

78. The council (*Consiglio comunale*) is responsible for planning and controls governance matters. The city council in particular adopts the budget of the town. All the remaining competences are up to the mayor and her/his government (*giunta comunale*). The members of this municipal government (*assessori*) are appointed and removed by the mayor (they can be chosen from among the members of the council or from outside the council).

79. In the provinces the key executive is still the president of the province (*presidente della provincia*), who has the same institutional profile and type of competences as the mayors have in municipalities. The president is no longer elected by the inhabitants of the province by universal and direct suffrage. He/she is elected by secret ballot and restricted suffrage by the mayors and by the members of the local council of the municipalities of the province. Only mayors are eligible for the post of president of the province. Therefore, if the president ceases to be the mayor of his city, she/he can no longer be the president of the province. The president may appoint a vice-president from among provincial council membersto help and assist the president in discharging his/her duties. The old “Provincial board” was eliminated by the reforms.

80. The members of the provincial council (*consiglio provinciale*) are also elected through secret ballot and restricted suffrage by the mayors and by the municipal councillors of the province from among themselves. The competencies of the provincial council are, *mutatis mutandis*, the same as those of the municipal council but it should be pointed out, that there are no specific provisions on the possibility of formulating a vote of dismissal or censorship in the Council against the president, which is in contradiction to Article 3 paragraph 2, of the Charter. During the consultation procedure, the Ministry of Regional Affairs and Autonomies indicated that above-mentionned provincial reform text expressly addresses these critical issues.

81. The metropolitan city, as a “new” type of local, intermediate entity was already foreseen in the Act of 8. June 1990 (law 142/1990), but it took nearly a quarter of a century until this institution was activated; the Delrio Act “acted” the actual establishment of those bodies. The key bodies of the

metropolitan cty are the metropolitan mayor, the metropolitan council, and the metropolitan conference.

82. The metropolitan mayor (*sindaco metropolitano*) has more or less the same institutional and administrative profile as the president of a province. The latter is elected by the mayors and local council members. By contrast, the metropolitan mayor is not elected by some kind of electorate for this specific position. The mayor of the city-capital of the province (*capoluogo*) becomes *ex officio* automatically the metropolitan mayor of the metropolitan city (Article 19, Delrio Law) and discharges simultaneously both positions as a metropolitan mayor and a city mayor in one. The metropolitan mayor may appoint a vice-mayor.

83. The metropolitan council (*consiglio metropolitano*), has a profile and powers that replicate to a large extent those of a provincial council. It is composed of the metropolitan mayor and a number of councillors that varies according to the population of the metropolitan city: these metropolitan councillors are elected for a 5 year term by the mayors and by the local council members of the municipalities (from among themselves). The *Sindaco Metropolitano* cannot be dismissed by the *Consiglio Metropolitano* (which is a violation of Article 3, paragraph 2 of the Charter).

84. Finally, another body is the metropolitan conference (*conferenza metropolitana*) which is composed of the metropolitan mayor (who chairs its meetings) and by the mayors of the municipalities included in the metropolitan city (that is, in the “old” province). Its main competence is the approval and amendment of the by-laws (*statuto*) of the metropolitan city.

85. Concerning the participation of citizens in local public affairs (Article 3, paragraph 2,), the Italian Constitution provides in the fourth paragraph of Article 118 that “the State, the Regions, the Metropolitan Cities, the Provinces and the Municipalities shall facilitate the autonomous initiative of citizens who, either individually or in association with others, undertake activities of general interest, on the basis of the principle of subsidiarity”. In 2023, Italy ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority. Many Italian municipalities have special statutes for citizens participation (an example was the City of Forli where the rapporteurs had a meeting with local officials during the monitoring mission) and civil society is very active in many parts of the country.

86. During the monitoring mission, several interlocutors from different institutions pointed out that direct election for councils and presidents/mayors is going to be re-introduced for provinces and metropolitan cities and relevant bills have been under discussion in parliamentary committees although there have been no results yet.. Representatives from the Conference of Regions and Autonomous Provinces of Italy (CRAP) emphasised that the long-lasting debate on reform and re-introduction of directly elected bodies at the level of provinces and metropolitan cities creates a limbo with paralysing effects, also disturbing activities, planning and decision-making procedures at the regional level. During a meeting at the Italian Senate, officials demonstrated their optimism that plans for the restoration of the democratic elections and policy responsibilities for the provinces need the approval of both chambers, and the governing majority has expressed the hope that this will be done before the European elections and that elections for the provinces and metropolitan cities could take place in 2024.

87. Another issue concerning local democracy has been raised by local politicians: the reduction in the number of councillors has had negative effects, especially in small municipalities. In Fontana Liri (Region Lazio), for instance, the number was reduced from 16 to only 11 councillors, although councillors would only cost €100 each, and would be offering a lot of, knowledge and skills to their localities. According to several local politicians another change with negative effects for small and less privileged localities was the reduction of seats in both chambers of the Italian Parliament. In September 2020, a constitutional referendum approved the reduction of the number of Members of Parliament from 630 to 400 in the Chamber of Deputies and from 315 to 200 in the Senate. This reduction of parliamentarians was effective for the first time with the 2022 Parliamentary Elections and the negative effects of this reform on the voice of small localities and their access to decision-makers are becoming more evident with time, according to these local politicians.

88. An assessment of the Italian legal framework that was still valid during the monitoring visit would conclude that it does not comply with Article 3 paragraph 2, in the cases of the provinces and metropolitan cities, since their governing bodies are not elected by the people. In particular, especially

the double role of the Mayor of the capital city who becomes *ex officio* and without any kind of targeted election the Mayor of the Metropolitan city, constitutes a blatant violation of the Charter. Also the lack of a meaningful responsibility and of the metropolitan mayor and the President of the Province vis-à-vis the respective councils is in contradiction with the requirements of Article 3, paragraph 2. Nevertheless, since a new reform aiming at the re-democratisation of provinces and metropolitan cities is already on track, the rapporteurs are willing to accept that the Italian system complies with the requirements of Article 3 paragraph 2 of the Charter, provided that the aforementioned legal re-introduction of direct election in provinces and metropolitan cities does take place in the coming months.

3.3 Article 4 – Scope of local self-government

Article 4 – Scope of local self-government

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
3. Public responsibilities shall generally be exercised, in preference, by those authorities who are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

3.3.1 Article 4.1

89. The Contemporary Commentary emphasises that Article 4, paragraph 1 requires clarity and legal certainty for the regulation of the "basic powers and responsibilities" of local government bodies. They should be prescribed by the constitution or by statute, to ensure predictability, permanence, and protection for the benefit of local self-government. Therefore, the tasks of local authorities should not be assigned on an ad hoc basis and should be properly enshrined in written parliamentary legislation. Legislative processes in the parliament facilitate the implementation of other Charter principles and safeguards, such as prior consultation (Article 4, paragraph 6, Article 9, paragraph 6) and commensurability (Article 9, paragraph 2).

90. Establishing local powers and competencies through administrative regulation should therefore be avoided. But this general rule is not incompatible with the assignment to local authorities of powers and responsibilities "for specific purposes" (e.g. implementation of EU law) in accordance with the law (Article 4, paragraph 1,). This exception allows the assignment of specific tasks not already included in the national legal framework for local government. This can be done by administrative regulation but must in any case be an exceptional mechanism. In Italy, the basic powers and responsibilities of local authorities are, in principle, prescribed by statute either at the national or regional level while a certain margin of self-regulation (see below) is given to local authorities. A comprehensive piece of legislation including the main competencies of local authorities does not exist, however.

91. The constitution (Article 117, paragraph 6) recognises the regulatory powers of municipalities, provinces and metropolitan cities in terms of "the organisation and implementation of the functions attributed to them" (Article 117). Also, it recognises certain fiscal powers, such as the power "to set and levy taxes". But there is not a list or even a "core" of essential or nominated "competencies", in the Constitution and the legislators seem to have a wide margin of discretion regarding the allocation of tasks across the different levels of governance. Article 118 introduces, however, the principle of subsidiarity, alongside the principles of proportionality and differentiation. There is a clear constitutional preference in favour of the municipalities as the first instance to discharge administrative functions. This does not mean, however, that other levels of governance (e.g. the provinces) can be left without proportional functions and restricted to marginal or/and residual roles.

92. According to Article 117 paragraph 2 of the constitution, the State has exclusive legislative powers in, among others, electoral legislation, governing bodies and fundamental functions of municipalities, provinces and metropolitan cities. At the same time, however, regions have concurrent legislative powers in across a large range of issues (see Article 117, paragraph 3) and autonomous legislative powers "in all subject matters that do not expressly pertain to State legislation" (Article 117, paragraph 4). In addition, Article 117, paragraph 6 clarifies that "regulatory powers shall be vested in the State with regards to the subject matters of exclusive legislation, subject to any delegations of such powers to the regions. Regulatory power shall be vested in the regions in all other subject matters".

93. When Regions legislate on these matters, they may allocate competencies to their own local authorities. This can introduce a certain diversity in the allocation of tasks across the different regions

and this seems to be a fact in some cases, as already confirmed by the previous monitoring report on Italy (2017), with special reference to the Veneto Region. The principles of differentiation and proportionality seem to encourage a differentiated legal framework and an allocation of tasks following a pattern of "variable geometry" not only across regions but even at the same governance level, for instance concerning municipalities of different sizes and potentials.

94. In addition, Article 116 of the constitution provides for, as already mentioned, special agreements between the States and region(s) "after consultation with the local authorities" about "additional special forms and conditions of autonomy" related to the areas of concurrent legislation (Article 117, paragraph 3) or some specific areas of exclusive state legislation (arrangements for justices of the peace, and general provisions on education, the environment and cultural heritage).

95. This differentiation should not, however, harm the unity and coherence of the country. The constitution provides, in Article 120 paragraph 2 that the government may act, *inter alia*, when this "is necessary to preserve legal or economic unity and in particular the essential level of benefits relating to civil and social entitlements, irrespective of the territorial boundaries of local governments".

96. Accordingly, the Committee for the identification of Essential Performance Levels (CLEP), chaired by Emeritus Professor Sabino Cassese (former Minister of Public Administration and Judge of the Constitutional Court) has been established as a technical body made up of 61 experts – institutional figures, professors of constitutional and administrative law and economists – who have the task of supporting and accompanying the reform of the differentiated autonomy (that will allow, the regions to be almost fully autonomous in 23 topics mentioned by the Constitution and to sign pertinent agreements with the central state that have to be approved by both chambers of the Parliament). CLEP recently concluded a large part of its work and identified "LEPs" (*livello essenziale delle prestazioni*), essential levels of performance concerning the civil and social rights to be guaranteed throughout the national territory as part and mandatory prerequisite of the differentiated autonomy reform project, "Provisions for the implementation of the Differentiated Autonomy of the regions with Ordinary Statute under Article 116, paragraph 3 of the constitution".

97. In the following stage, the Control Room, established under the 2023 Budget Law, chaired by the President of the Council of Ministers and made up of the ministers holding powers coming into question for devolution or delegation, is expected to take action. The works of the Cassese Committee ended on 30 October 2023, therefore in compliance with the deadline set by the government, the Control Room will have to make its decision by 31 December definitively identifying LEP's.[25] In the following, negotiations for devolution will begin, as provided for by Article 116 of the Constitution. The Cassese Committee has defined, among others, the standards regarding instruction, to ensure that there is uniformity in services across the national territory; as for healthcare, the LEAs ("*livelli essenziali di assistenza*" - essential levels of assistance) were systematically elaborated. Relevant levels have also been established for urban planning, environmental protection, and several other parameters.

98. The rapporteurs have carefully considered these developments and especially the concept of "differentiated autonomies" ("*autonomie differenziate"*) which could also be interesting for other countries. According to relevant materials and also to discussions with local interlocutors, there is no doubt that the basic powers and responsibilities of local authorities are defined by statutory law and Italy complies with the first paragraph of Article 4.

3.3.2 Article 4.2

99. Local authorities must have the right to exercise their initiative on matters not explicitly excluded from their competence by law. In this area, national legal traditions range from the "ultra vires" principle, which requires a statutory basis for any local government action, to the "general competence" clause for municipalities in France or the "Aufgabenerfindungsrecht" in Germanic legal systems. Article 4, paragraph 2 of the Charter envisages the right of local authorities to be proactive and to be treated as having a general jurisdiction, as enjoying the power to handle any matter, that is

25. During the consultation procedure, the Ministry of Regional Affairs and Autonomies indicated that the deadline for the work of the Steering Committee for the determination of the LEP (Essential Levels of Performance) was extended to 31 December 2024 by Article 15 of Decree-Law 215 of 2023, currently being converted.

to say, any kind of public affairs as set out by Article 3, paragraph 1 so as "to promote the general welfare of their inhabitants".[26]

100. Many countries have adopted the so-called clause of general competence for local authorities, which may also be combined with the subsidiarity principle. In Italy, the constitutional amendment of 2001 introduced the general competence clause and the subsidiarity principle (especially Articles 117 and 118). According to Article 2, paragraph 4b of Law No. 131/2003, on implementation of the 2001 constitutional reform (the La Loggia Law), the State has to pinpoint the basic powers and responsibilities of municipalities and provinces, by also taking into account those that they had historically exercised within their jurisdictions.[27]

101. The Contemporary Commentary to the Charter points out that restrictions on local bodies' "full discretion to exercise their initiative" can also stem from management, fiscal and budgeting rules that require a sound legal basis for spending. Due to the last financial crisis, budgetary and financial management rules have become much stricter and less flexible for local bodies in several countries, including Italy. These rules may subordinate local "initiatives" to the proof that the local body has enough funds to carry out "new" tasks and that this can be done in a financially sustainable manner. The improvement of the economic situation, however, and the endeavour to boost the European economy through additional funding since the pandemic have offered new possibilities for initiatives of local authorities.

102. Taking into consideration the legal framework, and the practice of local authorities, which was also examined during the monitoring mission in Italy, the rapporteurs conclude that, with the exception of small municipalities facing a lack of resources, local authorities in Italy do have possibilities for undertaking their own initiatives and Italy complies with Article 4 paragraph 2.

3.3.3 Article 4.3

103. Article 4, paragraph 3 of this article introduces the "subsidiarity principle", whereby public responsibilities should be exercised "in preference" by those authorities or bodies that are closest to the citizen. In this respect, it is essentially a political principle since it aims to bring decision-making as close as possible to the citizens. The Contemporary Commentary notes that the principle of subsidiarity has a dual rationale when applied to local authorities: on the one hand, it increases (through proximity) the transparency and democratic basis of governmental decision-making; on the other hand, it increases the efficiency of governmental action since local bodies are the best suited to fulfil certain tasks (such as providing social assistance or housing) due to their direct knowledge of citizens' needs.

104. The Contemporary Commentary points out that the principle of subsidiarity cuts across all levels of local and regional government and introduces closeness to citizens as a primary criterion for the assignment of responsibilities. Local authorities can also invoke this principle whenever a local function is transferred to the regions. In other words, it is vitally important for the protection of local authorities against trends towards upscaling and re-centralisation that threaten to render local self-government meaningless.

105. In Italy, municipalities do not face such a threat. After all, the constitution incorporated the principle of subsidiarity in 2001, focusing on municipalities with a presumption of competence in their favour: "Administrative functions shall be attributed to the municipalities, except for those cases where, to ensure they are uniformly exercised, they shall be conferred on provinces, metropolitan cities and regions or the State, pursuant to the principles of subsidiarity, differentiation and proportionality".

106. Subsidiarity, in the sense of the Charter, should also be implemented for the benefit of second-tier local governments, which are, in Italy, the provinces and the metropolitan cities. Centralising their responsibilities to the regional level would violate the Charter. The pending reform for the re-democratisation of this tier in Italy and the re-establishment of provinces and metropolitan

26. Boggero G (2018), *Constitutional Principles of Local Self-Government in Europe*, Brill, Leiden/Boston, p. 150.
27. See Italian Constitutional Court (Corte costituzionale), Judgment of 20 November 2009, No. 307 on water supply as a typical historically conditioned task of municipalities. Also (in general terms), the Judgment of 10 February 2014, No. 22. See Boggero, ibid.

cities as fully-fledged local authorities of the second tier should include the devolution of tasks from the regional level.

107. Besides this pending reform at the second tier, it cannot be disputed that according to the law and in reality, an important share of public responsibilities is exercised by preference by the municipalities which are the authorities that are closest to the citizen. A further elaborated proportionality check in combination with a formalised and considerably more developed system of consultation (see Article4, paragraph 6) would be an efficient way to ensure that a high level of responsibility decentralisation in Italy will be sustainable in the future. Therefore, the rapporteurs conclude that Italy complies with Article 4, paragraph 3.

3.3.4 Article 4.4

108. According to Recommendation CM/Rec(2007)4[28] of the Committee of Ministers "on local and regional public services", lawmakers should establish a clear definition of the responsibilities of the various tiers of government and a balanced distribution of roles between these tiers in the field of local services. Such a distribution of roles, accepted by the stakeholders concerned, would make it possible to avoid both a power vacuum and the duplication of powers. Moreover, this allocation of responsibilities should promote predictability and guarantee continuity in the provision of certain local public services that are essential for the population.

109. During the monitoring visit, representatives of AICCRE confirmed that there are regional laws in which the breakdown of responsibilities across the different levels of territorial authorities (regions, metropolitan cities, provinces, municipalities) is indicated. Other interlocutors claimed that the split of responsibilities between regions and provinces will be an important challenge and suggested the establishment of a special committee that would address this issue, also including the drafting of a relevant national law. Some functions of provinces have been eliminated because it was expected that provinces would cease to exist, but the latter was not realised. Now the provinces are in limbo. They should be given important responsibilities at the supra-municipal territorial scale, especially in planning.

110. From the view of the rapporteurs, the delimitation of powers seems to be clearer for municipalities, while there is an obvious problem at the second tier of local self-government, given the limbo that provinces have been in since the referendum of 2016 and as long as their full re-establishment is still pending. The rapporteurs would encourage the Italian authorities to proceed as soon as possible with the necessary legislation, now that a consensus has been reached, as many interlocutors have stressed. Assuming that this is going to happen in the next months and considering that at the level of municipalities the situation has been characterised as positive in this regard by nearly all interlocutors, the rapporteurs conclude that Italy complies with Article 4, paragraph 4.

3.3.5 Article 4.5

111. Article 118 paragraph 2 of the Constitution clarifies that "municipalities, provinces and metropolitan cities carry out administrative functions of their own as well as the functions assigned to them by State or by regional legislation, according to their respective responsibilities". The Charter requires that the latter (functions assigned to municipalities by State or regional legislation) also allow discretion to local authorities in adapting their exercise to local needs.

112. According to Recommendation CM/Rec(2007)[29] "on local and regional public services", proximity to the population of local public services is a fundamental necessity, and local authorities have a vital role to play in the provision of these services. To ensure that services are adapted to citizens' needs and expectations, local entities should benefit from a high degree of decentralisation and a capacity for independent action in the provision of these services. Delegating authorities should adopt minimum standards for the protection of the users of the delegated services and create the necessary machinery for monitoring compliance with them.

113. According to AICCRE, the margins of discretion in delegated tasks is ompletely non-existent, especially for small and medium-sized municipalities facing particular local circumstances". A

28. Adopted by the Committee of Ministers on 31 January 2007 at the 985th meeting of the Ministers' Deputies.
29. ibid.

characteristic example is tasks related to the implementation of the NRRP, the lack of flexibility and the bureaucratisation of relevant internal procedures, which burdens civil servants, and has led to excessive, meaningless workloads in some cases.

114. Interlocutors from the central government have recognised that problems of overregulation and bureaucratisation do exist in some cases (especially concerning the implementation of the NRRP and other projects) and declared their willingness to resolve these problems in cooperation with associations of local authorities. Taking these statements into consideration, the rapporteurs conclude that Italy partially complies with Article 4, paragraph 5 of the Charter.

3.3.6 Article 4.6

115. According to the Contemporary Commentary, consultation is a key principle of the Charter and local authorities should be consulted by State (or regional) bodies in the discussion and approval of laws, regulations, plans and programmes affecting the legal and operational framework of local democracy. This principle ensures the genuine participation of local stakeholders in the decision-making process of State (or regional) government entities with the power to define the rights of local authorities. This also increases democracy insofar as central government politicians have to listen to the voices of local representatives and their associations. Moreover, this is required by the principles of transparency in government action, and by the principle of subsidiarity.[30]

116. In Italy, the consultation and participation of local authorities in the decision-making process are guaranteed by a system of bilateral/multilateral bodies/committees, also called conferences. There are three major bilateral bodies (*Conferenze*): a) The Permanent Conference for the relations between the State, the regions and the autonomous Provinces of Trento and Bolzano (*Conferenza Stato-Regioni)*, chaired by the Minister of Regional Affairs and Autonomies; b) the Conference State-City Local Autonomies governments (C*onferenza stato-città*), chaired by the Minister of the Interior and by the Minister of Regional Affairs and Autonomies; and c) the Joint Conference (*Conferenza Unificata*), chaired by the Minister of Regional Affairs and Autonomies of Italy.

117. The Permanent Conference for the relations between the State, the regions and the Autonomous Provinces of Trento and Bolzano was established with the Prime Ministerial Decree of 12 October 1983 and operates to promote cooperation between the activity of the State and that of the regions and the autonomous provinces. In this conference, the Government of Italy consults on the interests/preferences of the regions on their most important administrative and regulatory acts. Moreover, the Permanent Conference pursues the objective of achieving full collaboration between central and regional administrations; it also includes a specific session where aspects of European policy that are of special interest to regions are discussed.

118. The Conference of State-City Local Autonomies was established by Legislative Decree No. 281 of 28 August 1997. Its functions are the following: co-ordination of the relations between the State and local authorities; provision of analyses, information, and discussion on issues related to general policy directions that can impact the specific or delegated functions of provinces, municipalities, and metropolitan cities; discussion and examination of problems relating to the organisation and functioning of local authorities, including aspects relating to financial and budgetary policies, human and instrumental resources, and legislative initiatives and general government acts. In addition, this conference has the following tasks: the discussion of problems relating to the management and provision of public services and any other problem that is submitted to the opinion of the conference itself by the delegate of the Prime Minister or the President of Italy, as well as the request of local authorities; diffusion of information and initiatives to improve the efficiency of local public services; and encouraging activities relating to the organisation of events involving multiple municipalities or provinces to be held at a national level.

119. The Joint Conference, which is made up of the representatives of the two conferences described above, has the following functions: to promote co-operation between the national level and the overall system of autonomies and to examine regulations and any other aspects of common interest. This conference is competent in all cases where regions, provinces, metropolitan cities, municipalities, and mountain communities, are called upon to express their views on the same subject. Within the Joint

30. Resolution 368 (2014), debated and adopted by the Congress on 27 March 2014. Rapporteur: Anders Knape, Sweden (L, EPP/CCE). See also Resolution 437(2018) on the consultation of local authorities by higher levels of government, of 8 November 2018.

Conference, there is the "*Conferenza permanente per il coordinamento della finanza pubblica*" that is responsible for the discussion of the harmonisation/co-ordination of multilevel public finance issues.

120. The system of conferences adopts among others the following outputs:
- Binding *accordi*. These are finalised as expressions of assent of the Government of Italy and the presidents of the regions and autonomous provinces of Trento and Bolzano, as well as of the representatives of the local authorities;
- Binding *intese*. These are based on the principle of collaboration and in the pursuit of objectives of functionality, cost-effectiveness, and the effectiveness of administrative action, and are used to coordinate the exercise of the respective competencies and carry out activities of common interest;
- Non Binding Opinions (*Pareri*): They are the opinions expressed by regions and local authorities on national legislative initiatives.

121. According to AICCRE the associations consulted by the central government are Anci (National Association of Italian Municipalities), Upi (Union of Italian Provinces) and Uncem (National Union of Mountain Communities). AICCRE, although representing all Italian local and regional authorities at European level, is not among those consulted. It therefore makes the point that all associations that have an established role in Italian law (e.g. in TUEL) should be included in the bodies consulted by the central government on bills and all other matters that directly affect them, including financial and budgetary matters. In particular, it argues that AICCRE should be included on an equal footing with Anci, Uncem, and Upi, allowing it to express a European vision on national issues.

122. Representatives of the Emilia-Romagna Region have pointed out, that in addition to functions of a consultative nature, there are deliberative functions within the scope of the subjects and objects that may be indicated by the legislation, as well as powers to designate and/or appoint the heads of bodies and organs that carry out activities or provide services instrumental to the exercise of the concurrent functions of the State government, the regions and autonomous provinces. This is particularly important given that the results of consultation through the conferences often do not find adequate development in the final decisions.

123. Concerning co-operation at the territorial level, the constitution (Article 123, paragraph 4) provides for the establishment in each region (at least in the Ordinary Regions) of a Council of Local Authorities (CAL) as a representative, consultative and co-ordinating body between the region and the local authorities with general competence, which exercises its functions and participates in the decision-making processes of the region concerning the system of local authorities and local autonomies, employing proposals and opinions in the manner and form provided for by the statute and regional laws.

124. It has to be considered that many administrative functions fall under the responsibility of the local level as per the principle of subsidiarity stated in Article 118 of the constitution. Therefore, there is a strong need to create an institutional setting that gives the municipalities the possibility of expressing their views on the political and administrative actions of the region they are situated in.

125. Regarding the functions, the regulation of CALs varies from region to region, but there are two common features. Firstly, it is a body conceived as strictly representing local authorities, even if the criteria that determine its composition vary (it may be composed of representatives of the local executive, the local councils, or both). Secondly, all CALs are expected to issue mandatory opinions on certain matters, including amendments to the regional statutes and approval of budgets and finances.

126. In its ruling No. 370/2006, the Constitutional Court decided that special regions do not have to establish this institution, given their exclusive competence over the organisation and the functioning of local authorities. Nonetheless, all five special regions set up such CALs, thus conforming their intergovernmental institutional structures to those of the ordinary regions.[31]

127. Concerning the possibilities for local entities to defend their status and interact with the national institutions, it is also interesting to consider that—despite the constitutional recognition of local entities

31. Besides some peculiarities in composition and functions. See: D'Orlando, E. and Grisostolo, E. F. (2018) "La disciplina degli enti locali tra uniformità e differenziazione", in: Palermo, F. and Parolari, S. (eds) *Le variabili della specialità: Evidenze e riscontri tra soluzioni istituzionali e politiche settoriali*, Edizioni Scientifiche Italiane, Naples, pp 99–160 (148).

(see comments on Article 2) – no legal provision grants them instruments to directly access the Constitutional Court to ensure that their prerogatives are respected (see comments on Article 11).

128. This impediment has led over time to an accentuated search for ways of protection "mediated" above all by the State, less frequently by the regions, which have thus both become architects of the safeguarding of municipal (and provincial) autonomy.[32] The Constitutional Court identified a solution in its ruling No. 196/2004: "the fourth paragraph of Article. 123 Cost. has configured the Council of Local Authorities as a necessary organ of the Region and that art. 32. 2 of law n. 87 of 1953 (as replaced by art. 9.2, of law n. 131 of 2003) has attributed precisely to this organ a power of proposal to the regional council relating to the promotion of judgments of constitutional legitimacy directly against the laws of the State".

129. In addition to CAL, the regional legislation of Emilia-Romagna provides for numerous other forums for consultation and cooperation - sometimes of a political nature with strategic planning and policy-making functions, sometimes of a technical nature with regulatory powers - with local authorities active in sectors of great importance: from health protection to roads, from the environment to waste management, (e.g. the Regional Agricultural Council or the Territorial Social and Health Conferences).

130. Other interlocutors complained that "legislative insecurity" would be a big problem despite the system of conferences and the long-pending reform of the provinces would be a good example. Consultation with the Italian parliament would be particularly difficult, and the reduction in the number of Members of Parliament has had negative effects on the access of smaller localities to the parliament and central power in general. Representatives of the Municipality Fontana Liri have also emphasised that the existing system of conferences has the disadvantage that small municipalities have no direct access and cannot be heard when decisions affecting them are taken. During the consultation procedure, the Conference of Regions and Autonomous Provinces criticised the lack of involvement in the definition of interventions to be financed, during the drafting of the reform and investment plan for the country. It noted that such an involvement would have ensured better implementation of the planned measures, generating an impact more responsive to the needs of the territories and a greater balance of growth.

131. Despite these criticisms (that should be considered for future reforms), the rapporteurs have the impression that Italy has developed a fully-fledged system of consultation that in general responds to the requirements of the Charter.

3.4 Article 5 – Protection of local authority boundaries

Article 5 – Protection of local authority boundaries
Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

132. According to the Contemporary Commentary, the Charter does not prohibit mergers or impose a specific type of territorial or institutional form. Article 5 also refrains from introducing imperative criteria for the form and implementation of boundary changes, such as the social, demographic, or economic criteria often applied in physical planning. However, the Charter does introduce procedural rules for changes in local authority boundaries. It is therefore a mandatory procedural requirement that no change in local boundaries may be adopted without consultation, which must take place at an appropriate stage before a final decision on the matter is made. This is required to promote the efficiency of consultation, in other words, the real possibility for local communities to be heard and to express their views at a time when their influence over merger decisions and their various aspects can be exercised so that consultation is not merely formal or symbolic. Consequently, a boundary change carried out without consulting the local community would be in breach of Article 5.

133. According to the constitution, mergers can be decided after "having consulted the populations involved" (Article 133). Mergers represent the most advanced stage in the rationalisation of municipal functions and are a useful tool for reducing management costs and triggering economies of scale

32. Valdesalici, A. andTrettel, M. (2023), "The System of Local Government in Italy: A Stress-Test to Traditional Paradigms?", in: Nicolini, M. andValdesalici, A. (eds), *Local Governance in Multi-Layered Systems. Ius Gentium: Comparative Perspectives on Law and Justice*, Vol 108. Springer, Cham.

within the municipality. The establishment of the new entity and the procedures for the merger procedure are a regional competence, determined by law. State contributions are provided for the merging municipalities, with extraordinary revenues for the following 10 years and a series of facilitative or more favourable measures already allowed to one or more original municipalities. Regions may also provide for contributions through their own laws. In addition, protection and simplification measures are also applied to the new body, which may vary between regions.

134. In Italy the strategy–starting from Law No. 142/1990– concerning mergers has traditionally been that of a voluntary system mixed with a series of economic incentives and differentiated regulatory solutions provided to guarantee the representativeness of the municipalities involved in the merger. Mergers have been the subject of numerous subsequent legislative interventions of the national authority, in particular with the advent of the crisis as it has been considered an effective tool to counter the effects of the crisis itself. In fact, since 2010 different legislative measures have come up with incentive solutions to encourage municipal mergers since these have been perceived as a valid means for reduce public spending.

135. Law No. 56/2014 introduced a significant innovation by modifying Article 15 of TUEL related to the procedure for territorial reorganisation. In particular, the law establishes that the State delivers, for the 10 years following the merger, extraordinary contributions commensurate to a quota of the transfers to which each single merging municipality is entitled. In addition, as already mentioned, each single region can opt to foster the merger of municipalities by adding economic incentives. These measures have resulted in the significant reduction of the overall number of municipalities. Since 2014 there has been an average reduction of 20 municipalities each year (mostly those with less than 5 000 inhabitants), with a peak decrease of 45 between 2015 and 2016. Currently, the orientation of national legislation is to promote and increase mergers to the maximum possible extent, to achieve, as the ultimate goal, a reorganisation of the territory capable of strengthening the supply and efficiency of services provided to citizens.[33]

136. According to the latest data from the Italian Ministry of the Interior, there were 107 mergers of municipalities in place as of 2020 for ordinary statute regions and 34 for special statute regions, making a total of 141 mergers. Analysis by region and geographical area shows a marked concentration of the phenomenon in northern Italy (115/141 mergers, around 82%), as opposed to its low significance in southern Italy (4/141 mergers). In terms of population size, the phenomenon most frequently affected entities with a population of less than 5 000 inhabitants. As a result, there has been a decrease in the number of municipal authorities, to 7 896 at present.

137. As interlocutors emphasised, mergers in Italy follow a bottom-up process, including a local referendum. Considering the legal framework and these facts, the rapporteurs conclude that Article 5 of the Charter is fully respected in Italy.

3.5 Article 6 – Appropriate administrative structures and resources

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

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

3.5.1 Article 6.1

138. According to the Contemporary Commentary, this paragraph states that local authorities should have the discretion to determine their internal administrative structures or organisation. The power to organise their affairs is accordingly a part of the autonomy enjoyed by local entities. This discretion, like the other elements of local autonomy, is not absolute but has to comply with the general statutory framework of government organisation. The ultimate goal of the paragraph is to safeguard local autonomy by allowing local authorities to establish internal administrative structures and arrangements that enable them to meet the various needs of residents and provide a full range of public services. Consequently, domestic local government legislation may lay down fundamental guidelines for the

33. Valdesalici, A., Trettel, M., op.cit.

internal administrative organisation of local authorities but must leave local authorities' room for discretion so that they can choose and set up their organisational structure.

139. The organisational autonomy of local authorities is explicitly provided for by the constitution itself (Article 117, paragraph 6): "municipalities, provinces and metropolitan cities have regulatory powers as to the organisation and implementation of the functions attributed to them". Local authorities can approve their by-laws, regulating both the organisational structure of their internal services, as well as the precise competencies of the local organs. The comprehensive document of such by-laws is called a "*statuto*" and is regulated extensively in Article 6 of the *Testo Unico.* The *statuto* has to be approved in the council by a two-thirds majority.

140. In light of this information, it can be concluded that Article 6, paragraph 1 of the Charter is complied with in Italy.

3.5.2 Article 6.2

141. The recruitment of personnel is, according to the Contemporary Commentary, an essential aspect of local government administration and autonomy. Local bodies need to have the necessary human resources to carry out their tasks, as the local authority would otherwise be an empty and powerless government structure. Local authorities are supposed to be capable of defining and implementing their own human resources policy to attract, recruit, train, and retain skilled administrative staff.

142. In the Recommendation 404 (2017) the Congress expresses its concern about "the reduced ability of local authorities to employ qualified staff to carry out their responsibilities as a consequence of the lack of career prospects, budget cuts, and the cross-cutting "freeze" on hiring new staff that has been implemented in recent years"; moreover, the Congress recommended strengthening the process begun in June 2017, in relation to local human resources and the possibility of new recruitment, so that local authorities can deploy high-quality staff, essential to properly discharge their responsibilities.

143. According to the relevant literature, but also local interlocutors (e.g. AICCRE), municipalities, provinces and metropolitan cities do enjoy considerable autonomy in the field of human resources and they can freely appoint and dismiss their employees. Each municipality is responsible for hiring, managing, and paying its public employees, within the framework of applicable legislation, the by-laws and regulations adopted by each city, and the applicable collective agreements signed with the trade unions. The legal regime of local government personnel changed with the reforms to privatise public administration staff (starting in 1993). Most employees of local authorities are regulated by the Italian Civil Code.[34]

144. Interlocutors from the Emilia-Romagna Region pointed out that this autonomy was restricted, and central government intervention was wide-reaching "in the less favourable phases of the economic cycle". During the same period of the crisis, according to information provided by the Mayor of Fontana Liri, municipalities lost, on average, 35% of their staff.. Other Interlocutors from AICCRE emphasised the shortage of personnel, resulting from years of a hiring freeze and the retirement of senior and middle management figures, whose replacement is not easy to implement and whose historical and local knowledge is being lost. The situation is said to be particularly difficult in smaller municipalities, interlocutors said that funding has been increasing, but implementation of "next generation EU" projects as well as of the NRRP at sub-regional levels will not be successful, if the drastic lack of personnel persists.

145. Interlocutors from the Italian Senate pointed out that the return of responsibilities to the provinces cannot be combined with the return of the staff previously responsible for these tasks;. the latter were transferred to the regions after the reform introduced by the Delrio Act, which combined the centralisation of formerly provincial competencies with the transfer of the responsible personnel. This staff is now accustomed to the status provided by the collective agreements of regions with trade unions and would not want to return to the provinces, according to the interlocutors. A sum of

34. Citroni,G., Lippi, A. and Profeti, S. (2019), "In the Shadow of Austerity: Italian Local Public Services and the Politics of Budget Cuts", in: Lippi, A. and Tsekos, T. (eds.), *Local Public Services in Times of Austerity across Mediterranean Europe*, Palgrave Macmillan, London, pp. 115-140.

approximately €900 million will be needed to provide the necessary human resources to the provinces.

146. During their visit to the Court of Audit (*Corte dei Conti*), the rapporteurs were informed that the hiring of 2 800 employees for the implementation of the NRRP has been approved. In several meetings in ministries and other central State institutions, interlocutors have admitted that local authorities are suffering from serious shortages of staff, especially concerning employees with important skills (computer specialists, accountants, engineers etc.). These State officials have expressed their willingness to address this problem as soon as possible. During the consultation procedure, the Prefecture of Rome pointed out several initiatives taken to facilitate and promote the recruiting of personnel, such as, in particular, special funding provided for the expense of personnel hired for the implementation of NRRP projects, referred to in Article 31-bis, paragraph 1, of Decree-Law No. 152/2021. These recruitments are not subject to the stringent regulatory limits provided for personnel. In addition, Decree-Law No. 113/2016, as amended by by Decree-Law No. 176 of 18 November 2022 (in Official Gazette No. 270 of 18 November) provided that even entities in provisional operation or that have failed to approve the management accounts or that have not fulfilled the transmission of data may still proceed with the hiring of temporary staff necessary to ensure the implementation of the NRRP.

147. In conclusion, it seems to the rapporteurs that there is still a problem with the lack of necessary staff in Italian local authorities and, since plans to cope with this problem have not yet been realised, Italy is only partially complying with the requirements of Article 6, paragraph 2 of the Charter.

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

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

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

3.6.1 Article 7.1

148. According to the explanatory report to the Charter, “this article aims at ensuring that elected representatives may not be prevented by the action of a third party from carrying out their functions”. The Contemporary Commentary points out that the first paragraph requires local authorities to provide all elected officials with the facilities, equipment, and technical support needed to carry out their tasks. This has to be done irrespective of the officials’ political affiliation, so local authorities must not discriminate, on material grounds, against the different political factions or groupings forming part of the council.

149. Free exercise of functions is guaranteed in Italy, even though differences in material conditions (equipment, support etc.) are not negligible, depending on the size and the economic situation of each local authority. According to AICCRE, another problem is the complexity of the legal framework which prevents local representatives from consciously and efficient exercising their duties. Councillors are in a subordinate position, compared to other elected officials, since they are short of information, means of compensation and assistance. Nevertheless, they are not criminally liable for opinions and votes expressed in the exercise of their functions, and the free exercise of their mandate is guaranteed by law. A serious problem for the free exercise of functions however are the pressures from organised crime, and the targeting of elected officials by violent assailants, a problem that is particularly serious in the southern regions of Italy (see part 6.2 in this report).

150. The rapporteurs conclude that, based on various sources, there are some important deficiencies due to threats and violence against elected officials, especially in some southern regions of Italy.

151. Therefore, Italy partially meets the requirements of Art. 7 par. 1.

3.6.2 Article 7.2

152. According to the Contemporary Commentary, this paragraph again refers to the conditions of office for local elected representatives and focuses on the financial parameters of their activities. It aims to ensure that local elected representatives receive "appropriate financial compensation" and to avoid the conditions of office preventing, limiting, or even excluding potential local candidates from standing for office or effectively discharging their tasks because of financial considerations.

153. By "appropriate financial compensation", the Charter means the combination of several elements: firstly, "appropriate compensation for expenses incurred in the exercise of the office"; secondly, if this is the case ("where appropriate"), compensation for loss of earnings incurred by the local representative in discharging his/her duties for the local authority; thirdly, "remuneration for work done", that is to say, a proper "salary" for the job; and, finally, social welfare protection.

154. In previous times, a contrary perception about the "honorary character" of elective office prevailed. In Italy, the famous *Statuto Albertino*, a liberal constitution from 1848, underlined this honorary character for all elective office.[35] But this tradition was replaced by one with a rather generous system of remuneration and compensation. Following the most financial crisis, compensation for provincial and metropolitan councillors was eliminated, triggering vehement protests reported to the rapporteurs on their part. The Constitutional Court, however, had already ruled some years previously, that the abolition of compensation for more than one political mandate/elective office (as for councillors who would not receive compensation for their activity in municipal associations) would not violate the basic principle of sufficient compensation for elective office.[36]

155. Following the previous monitoring mission, the Congress adopted Recommendation 404 (2017), where concern is expressed about "the lack of appropriate remuneration or compensation for the elected representatives of provinces and metropolitan cities for the discharge of their duties that, a situation thatmay also weaken the involvement of citizens in provincial politics (Article 7, paragraph 2)"; the Congress also recommended that the Committee of Ministers calls upon the Italian authorities to "establish a system of fair and appropriate remuneration of the representatives of provinces and metropolitan cities for the discharge of their duties".

156. These problems will persist as long as the direct election of governing bodies in provinces is not re-established. As local interlocutors in the Municipality of Forli have stressed, there is a special problem with the current status of local politicians from municipalities who are also members of provincial bodies or fulfilling the tasks of provincial presidents. These persons (and especially the presidents) have a double burden and workload, but they only receive allowances for one elective position. Their situation cannot be compared to the situation of the elected officials in municipalities who are also members of bodies of IMC bodies (this was the case that was judged by the Constitutional Court in 1997). The latter does not usually require the full-time activity of elected officials, while full-time activity is required at least for the presidents of provinces.

157. According to the Ministry of Finance of Italy, the system of remuneration of locally elected mayors/representatives (*Sindaci*) for the municipalities and metropolitan cities located in the regions with ordinary statutes has been recently modified by the Law No. 234/2021 (legge di Bilancio 2022, Article 1, c. 583), to align it to the remuneration of the presidents of the regions. More specifically, Article 1, c. 584 of this law defines the following upgrading scheme: 45% in 2022 and 68% in 2023. As for the system of remuneration of other locally elected representatives (*Vicesindaci, assessori, presidenti dei consigli comunali*), Article 1, c.585 aligns their remuneration with that of the mayors (*Sindaci*) and, therefore, to be updated and upgraded based on the previous scheme.

158. To cover the additional funding of the aforementioned measures, a specific fund managed by the Ministry of Interior of Italy has been created with the following resources: €100 million for 2022; €150 million for 2023; €220 million from 2024 onwards. From 2024, the system of remuneration of local elected mayors/representatives (*sindaci*) for the municipalities and metropolitan cities located in the

35. See Article 50 of this liberal constitution, signed by Carlo Alberto Re di Sardegna di Cipro e di Gerusalemme "Le funzioni di Senatore e di Deputato non danno luogo ad alcuna retribuzione od indennità": available at: https://www.quirinale.it/allegati_statici/costituzione/Statutoalbertino.pdf, accessed 7 February 2024.
36. La Corte Costituzionale, Sentenza no. 454, 30 Dicembre 1997 (nel giudizio di legittimità costituzionale dell'art. 14, secondo comma, della legge 27 dicembre 1985, n. 816 [Aspettative, permessi e indennità degli amministratori locali]), available at: http://www.giurcost.org/decisioni/1997/0454s-97.htm, accessed 7 February 2024.

ordinary regions will be defined according to the remuneration set by the Permanent Conference for the oresidents of the regions, up to the maximum amount of €13.800 per month for a total of 12 months. This will vary according to the population of the municipality:

- 100% for the mayors of metropolitan cities;
- 80% for the mayors of specific municipalities (comuni capoluogo di regione e di provincia) with a population higher than 100 000;
- 70% for the mayors of specific municipalities (comuni capoluogo di provincia) with a population up to 100 000;
- 45% for the mayors of municipalities with a population higher than 50 000;
- 35% for the mayors of municipalities with a population between 30 001 and 50 000;
- 30% for the mayors of municipalities a population between 10 001 and 30 000;
- 29% for the mayors of municipalities with a population between 5 001 and 10 000;
- 22% for the mayors of municipalities with a population between 3 001 and 5 000;
- 16% for the mayors of municipalities having a population of up to 3 000.

159. For the years 2022-23, the remuneration of mayors increases according to the scales previously defined, by guaranteeing the structural budget of the municipality. Law No. 234/2021 aligns the remunerations of the other locally elected representatives (*vicesindaci, assessori, presidenti dei consigli comunali*) with the modifications applied to mayors, according to the rates defined in Ministerial Decree No. 119 of April 2000.

160. In light of the above, the rapporteurs consider that Article 7, paragraph 2 is not respected in Italy in the case of provinces.

3.6.3 Article 7.3

161. According to the Contemporary Commentary, restrictions on holding elected office should be as limited as possible and set out in national laws. The main restrictions on holding office should be related to potential conflicts of interest or involve a commitment that prevents the local representative from professionally discharging his/her duties for the local authority.

162. In Italy, the *Testo Unico* (Articles 63 to 65) and the electoral legislation determine what functions and activities are deemed incompatible with the holding of local elective office. The rapporteurs conclude that Italy fulfils the requirements of Article 7, paragraph 3.

3.7 Article 8 – Administrative supervision of local authorities' activities

Article 8 – Administrative supervision of local authorities' activities

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

3.7.1 Article 8.1

163. The Contemporary Commentary notes that Article 8 of the Charter deals with the "administrative" supervision of the activities of local authorities. The explanatory report limits the subject matter of this provision to the supervision that is carried out "by other levels of government", that is to say, by central authorities or bodies (line ministries, ministry of the interior, etc.) or regional authorities. Article 8, paragraph 1 stipulates that any kind of administrative supervision of local authorities cannot be exercised if not explicitly laid down into law, that is in a statute or a constitutional provision. A legislative or constitutional basis should exist for supervision on both legality and expediency, while ad-hoc procedures should be ruled out.[37]

37. Boggero, G. (2018), Constitutional principles of local self-government in Europe, Brill, Leiden/Boston, p. 194

164. In its seminal Recommendation CM/Rec(2019)3 to member States on the supervision of local authorities' activities,[38] the Committee of Ministers of the Council of Europe underlined some key principles and guidelines in the area of supervision. The Committee of Ministers also set out three different types of supervision: administrative, financial and democratic, *only the first of which falls within the ambit of Article 8 of the Charter*. The existence of administrative supervision is justified by the need to comply "with the principles of the rule of law and with the defined roles of various public authorities, as well as the protection of citizens' rights and the effective management of public property".

165. In Italy, interlocutors from the Ministry of Finance have pointed out that the system of controls of territorial entities is based on the principle of constitutional equality of these entities with other levels of government (especially Article 114 of the Constitution). Over the years, this principle has led to the reduction of external administrative control from the central level, with the elimination of preventive controls of legitimacy characterised by a hierarchical approach and therefore detrimental to the autonomy of territorial entities.

166. There are, however, some interadministrative controls. These are regulated by the Constitution, by the general legislation on local authorities, and by sectoral legislation. Other types of controls may be specified by sectoral legislation. In the legislation, different techniques and controls may be identified. Under Article 120 of the Constitution, the government may intervene in certain cases of measures adopted by local and regional authorities. This power (the "power of substitution") is only possible in three situations:

- If subnational territorial authorities fail to comply with international provisions and treaties or EU legislation;
- in the event of grave danger to public safety and security;
- whenever such action is necessary to preserve the legal or economic unity of the country, and particularly if this is needed to guarantee the basic levels of benefits relating to the social and civil entitlements of the population.

167. Another type of interadministrative control is included in the general legislation on local authorities. According to Article 138 of TUEL, the central government, on the proposal of the Ministry of the Interior, may annul illegal decisions adopted by the local authorities. This device is called extraordinary annulment *(anullamento straordinario*) and a precise procedure must be followed: a relevant decree of the President of the Italian Republic is issued, following previous deliberation of the Council of Ministries and the opinion of the Council of State. During the monitoring visit of the Congress, there were no complaints about possible misuse of this extraordinary form of control. The procedural and legal guarantees that are established lead to the assumption that it is only applied when the protection of the legal order is required.

168. The rapporteurs conclude that provisions about administrative supervision are included in the Italian Constitution and statutes, therefore Italy complies with this Article 8, paragraph 1.

3.7.2 Article 8.2

169. According to the explanatory report to the Charter administrative supervision should normally be confined to the question of the legality of local authority action and not its expediency. One particular though not unique exception is made in the case of delegated tasks, where the authority delegating its powers may wish to exercise some supervision over how the tasks are carried out. This should not, however, result in preventing the local authority from exercising a certain discretion as provided for in Article 4, paragraph 5 for delegated tasks (see below).

170. As the Contemporary Commentary points out, with checks on legality, the supervisory body may verify, for instance, whether the local authority has acted within its powers, whether substantive regulatory standards or requirements have been met and whether powers have been exercised following legal procedures and within applicable time-limits, and so on. In the case of checks on legality, the supervisory body cannot replace the local authority's power of discretion with its own.

38. Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities' activities (adopted by the Committee of Ministers on 4 April 2019 at the 1343rd meeting of the Ministers' Deputies). This recommendation includes an appendix "*Guidelines on the improvement of the systems of supervision of local authorities' activities".*

171. The legality of local authorities' decisions is controlled by the courts, and currently there is no system of general and comprehensive administrative supervision over local authorities as is the case in many other countries. Some cases of supervision provided by sectoral legislation are mostly restricted to control of legality.

172. In light of the above, the rapporteurs conclude that Italy complies with Article 8, paragraph 2.

3.7.3 Article 8.3

173. In cases of substitution according to Article 120 paragraph 2 of the constitution, it is explicitly provided that "the law shall lay down the procedures to ensure that subsidiary powers are exercised in compliance with principles of subsidiarity and of loyal co-operation". In this way, the principle of proportionality is implicitly introduced for cases where substitution according to Article 120 takes place. In addition, according to the interpretation of the Constitutional Court (Ruling No. 43, 2004), the Constitution grants the State this power of interadministrative substitution as an extraordinary device, that can only be used in cases of "serious institutional emergencies that affect the basic interests of the Republic".

174. Also the provisions and procedures related to the so-called "extraordinary annulment" (see above) seem to reflect the concern for proportionate implementation of administrative supervision. Therefore, the rapporteurs conclude that Italy complies with Article 8, paragraph 3.

3.8 Article 9 – Financial resources

Article 9 – Financial resources of local authorities

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

3.8.1 Article 9.1

175. The explanatory report to the Charter points out that the legal authority to perform certain functions is meaningless if local authorities are deprived of the financial resources to carry them out. Article 9, paragraph 1 seeks to ensure that local authorities shall not be deprived of their freedom to determine expenditure priorities. According to the Contemporary Commentary to the Charter, this paragraph establishes two basic principles in the area of finance: firstly, local authorities should have adequate financial resources of their own; second, they should be free to decide how to spend those resources.

176. This provision about "adequate" resources is closely linked with the following paragraph 2 (principle of commensurability of local finances) and with paragraph 4 (which requires local finances to be diversified and buoyant). The wording "adequate financial resources" incorporates the requirement to ensure proportionality between the mandatory functions of local authorities and the funding available. The right to "adequate" resources is not absolute but has to be exercised "within national economic policy".

177. The second principle is that of the freedom of local authorities to dispose of (at least) their "own resources" within the framework of their powers. Consequently, Article 9, paragraph1 enshrines both a right (to have their own resources) and the freedom (to freely spend those resources). This freedom takes the form of various spending decisions, the most important being the adoption of an annual budget. This freedom is not limitless, since it is subject to restrictions stemming from relevant national policies, accounting principles, and controls applied to public spending. Local authorities are also subject to financial supervision (which is to be distinguished from administrative supervision, see above toArticle 8, paragraph1), mainly exercised by the Court of Audit (see below).

178. Following the reform of 2001, the Italian Constitution included several provisions on local authorities' finances. Article 119, paragraph 1 states that, alongisde the regions, municipalities, provinces and metropolitan cities" shall have revenue and expenditure autonomy, subject to the obligation to balance their budgets and shall contribute to ensuring compliance with the economic and financial constraints imposed under European Union Law".[39] Local authorities (paragraph 2) "shall have independent financial resources. They shall set and levy taxes and collect revenues of their own, in compliance with the constitution and according to the principles of co-ordination of public finance and the tax system". Local authorities shall also have their property, "their assets, which are allocated to them according to general principles outlined in State legislation" (Article 119, paragraph 7).

179. Local authorities shall also "have a share in the revenue from State taxes" (paragraph 2,). On the other hand, it is provided (Article 119, paragraph 5) that the State "shall allocate supplementary resources and adopt special measures" in favour of specific local authorities "to promote economic development along with social cohesion and solidarity to eliminate economic and social imbalances, to promote the exercise of the rights of the person or to achieve goals other than those pursued through the ordinary implementation of their functions".[40]

180. It should also be pointed out that, since the constitutional reform of 2001, local finances have been included in the subjects of concurrent legislation (Article 117, paragraph 3): "co-ordination of public finance and the taxation system". As defined in the same paragraph, "in the subject matters covered by concurrent legislation legislative powers shall be vested in the regions, save for the determination of the fundamental principles, which are set forth in State". This means that the regions can set local taxes, as long as they do not hit elements already taxed by the State. Regional laws may also determine variable tax rates and establish other schemes for co-participation for local authorities in regional taxes. As a result, the financial situation of local authorities may present differences around the country, especially in the regions special status, since they manage almost all their own resources and have increased competence in the field of local government.

181. The 2001 constitutional reform and, later, the Fiscal Federalism Law No. 42 of 2009 (see below) set a milestone for Italy in its gradual move towards fiscal decentralisation. The objective of the reform was to increase subnational fiscal autonomy, efficiency, and accountability, and to guarantee an adequate level of subnational services across the country. It led to an increase in both own sources and shared taxes to cover spending obligations. It also led to the replacement of a portion of central government grants by tax revenue equalisation payments. Under the national recovery and resilience plan, the central government introduced a new fiscal reform in order to sustain regional economies and enhance tax collection mechanisms (see below). This will increase regional dependency on central transfers despite continuous efforts to promote regional fiscal autonomy.

182. The key legal framework on local finance is configurated by a set of laws and regulations, the backbone of which was the Fiscal Federalism Act of 2009 (Act No. 42 of 5 May 2009). This key statute enabled the approval of further regulatory measures and enumerated general and specific guiding principles. Among those principles are co-ordination of public expenditures, consistency, financial discipline, rationalisation, and budgetary equilibrium. There were continuous amendments and readjustments to this statute due to recent years crisis. In 2023, the Italian Parliament adopted the framework for a major tax reform. Act No. 111 dated 9 August 2023 (Enabling Law) entered into force on 29 August 2023. From the date of entry into force, the government has approximately 24 months to execute the reform through one or more legislative decrees. The Enabling Law (Article 8) provides for a gradual elimination of the Regional Tax on Productive Activities (IRAP, generally levied

39. Constitutional Act 1/2012 introduced the budgetary principle of equilibrium, implementing Italy's internationall commitments.
40. See also Constitutional Court Rulings No. 37/2004 and No. 425/2004.

at 3.9%), starting from partnerships and other entities without legal personality, and eventually totally replacing the tax with a surcharge computed similarly to IRES (*imposta sul reddito delle società* or corporate income tax – CIT). During the consultation procedure, the Ministry of Regional Affairs and Autonomies highlighed that the NRRP for Italy includes among its milestones, the completion of the fiscal federalism envisaged by Law No. 42 of 2009 (to be completed by the first quarter of 2026) with the aim of improving the transparency of fiscal relations between the different levels of government, allocating resources to subnational administrations on the basis of objective criteria, and incentivising the efficient use of resources.

183. For SNGs, intergovernmental transfers remained the primary source of revenue in 2020. The share of transfers increased sharply from 47% in 2016 to 60.8% in 2020 (v. 41.2% on average in OECD countries in 2020) as the central government heavily supported SNGs through transfers during the pandemic, notably to cover regional health spending. As a result, the contribution of tax revenue to SNG revenue was well below the OECD average in 2020 (42.4% respectively), while other sources of revenues (tariffs and fees: 10.6%) are close to the EU27 average (10.3%) and slightly below the OECD average (13.3%). In 2020, the regions represented 67% of total SNG revenue, and municipalities represented 30%, while provincial IMC bodies and metropolitan cities held a tiny 3% share.

184. In 2020, the own tax revenue of SNGs in Italy accounted for 4.1% of GDP (v 7.2% in the OECD) and 14.1% of public tax revenue (v 32.3% in the OECD). SNG tax revenue comprises both shared and own-source taxes. Municipalities receive a share of the personal income tax (*compartecipazione* - IRE), but they do not have control over it. The central government also shares several national taxes with the regions (RSS), notably personal income tax (PIT), the corporate income tax (CIT), excise duties and stamp tax.

185. The main source of municipal tax revenue is the recurrent property tax (25.8% of SNG tax revenue in 2020). It was reformed in 2013 with the creation of a single municipal tax (*imposta unica comunale* - IUC), which incorporates three taxes: a) IMU (*imposta municipale propria*), which is a real estate tax paid by owners of secondary residences only; b) TASI or “tax for indivisible services”, which is a supplementary real estate tax, meant to meet expenses for the delivery of lighting, street cleaning, green areas and services that are provided equitably by municipalities to all citizens; and c) TARI (waste tax) which must cover the cost of the service of collection and treatment of waste. Both IMU and TASI were repealed on primary residences (except luxury homes) in 2014 and 2015. A reform of cadastral values is still being discussed to increase the property tax base and fully exploit the potential of the tax. In 2020, the recurrent property tax accounted for 1.1% of GDP, close to the OECD average (1.0% of GDP). Municipal own-source taxes also include a surtax on PIT , with some municipal leeway on the rate, a tax on advertising and a touristic tax. The threshold of the rates on the PIT surtax will be revised as part of the fiscal reform.

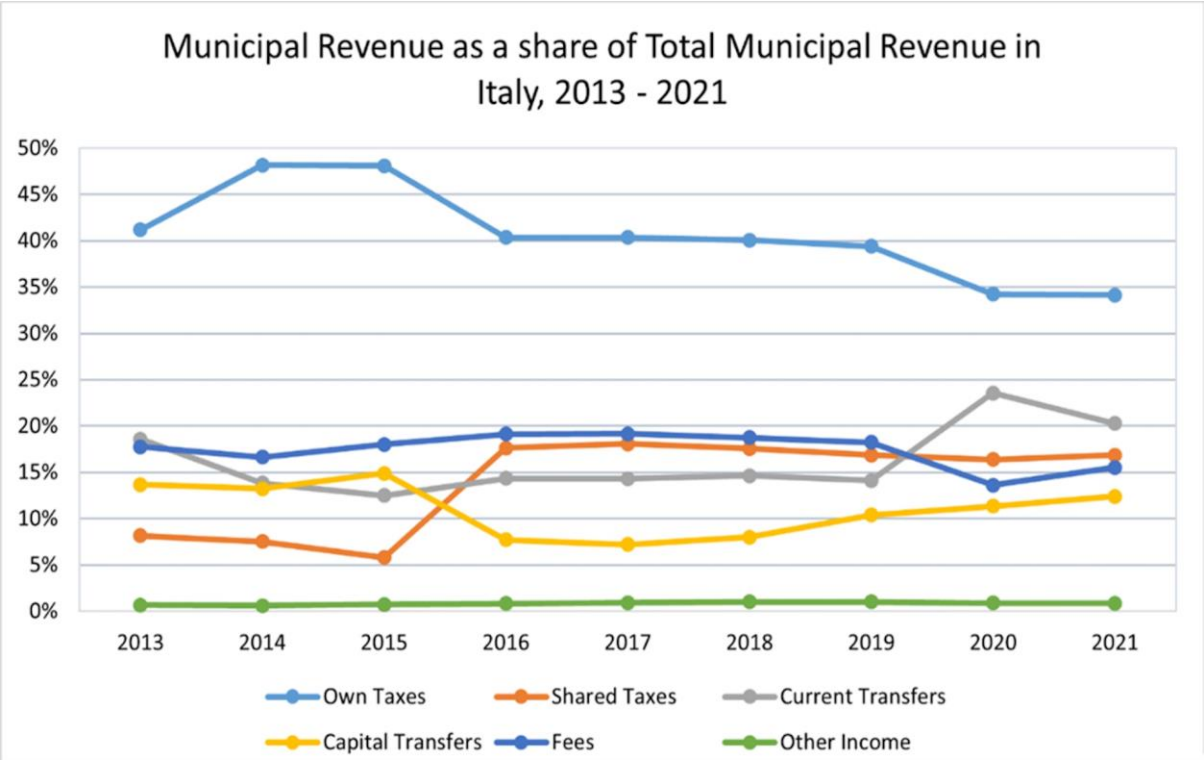
186. Italian municipalities used to collect a diverse range of fees and charges for installation of advertising (CIMP), occupation of public spaces by economic activities (TOSAP and COSAP) and some public works carried out by the municipality (ISCOP). Municipalities also collect traffic and parking fines. During the consultation procedure, the Ministry of Economy and Finance stressed that the budget law 2020 introduced a Single Patrimonial Fee (*Canone Unico Patrimoniale*) in substitution of the so-called minor taxes (TOSAP, COSAP and CIMP), rationalising and making more efficient the collection of these revenues.

187. In line with the patrimonial nature of the fee, the legal framework limits itself to regulating only the fundamental features, leaving the normative concretisation of the fee almost entirely to the discretion of municipalities.

188. The time series of municipal revenue in the following figure[41] shows that own taxes represent the main source of revenue for municipalities, accounting for approximately 30% of their total local budget. Since 2014, the main source of revenues for municipalities has been the IUC made up of IMU, TARI, and TASI. With Legge di Bilancio of 2020, the “New IMU” was established and TASI was incorporated into the IMU. The New IMU and TARI remain the main source of revenue for Italian municipalities, jointly with IRPEF, a surtax on individual income that each municipality may establish, setting its rate at a maximum of 0,8%(0.9% only for Rome Capitale). It can be concluded that the

41. Available at: https://www.eurac.edu/en/blogs/eureka/structure-of-local-revenues-a-comparative-analysis-of-italy-and-austria, accessed 7 February 2024.

Italian municipal budget is mainly made up of own-source revenues: fees (2021: 15%) and own taxes (2021: 34%).[42]



Source: AIDA PA Database; Bureau van Dijk – A Moody's Analytics Company; Big Data Analysis Platform-BDAP Ministry of Economy and Finance,Ministry of Interior

189. Concerning the grants, there are two separate systems of grants, one for the regions (RSO) and one for the municipalities. The 2001 constitutional reform and Fiscal Federalism Law of 2009 set the principles for both systems. The 2009 law mandates that officials use both standard expenditure needs and fiscal capacity when calculating the allocation of equalisation transfers. This new equalisation system is based on covering the costs of essential public services and equalising tax-raising capacities.

190. At the municipal level, the Municipal Solidarity Fund (*Fondo di Solidarieta' Comunale* - FSC), created by Law No. 228/2012, has been the most important equalisation tool. Managed by the Ministry of the Interior, it is endowed by a share of the local property tax, as well as by contributions from the central government. Grants consist exclusively of general-purpose equalisation grants, allocated according to a complex formula taking into account both fiscal capacity and expenditure needs to ensure the provision of the "fundamental functions" of municipalities. The rest of the FSC continues to be distributed on the basis of the historical level of transfers to individual municipalities. Since the 2014 Stability Pact, a portion of the FSC has been used for incentives promoting the merger of municipalities. Merged municipalities may receive grants that are up to five times bigger than that received by regular municipalities, for a period of five years at the most. In 2020, the first instalment of the FSC was anticipated to provide municipalities with leeway during the pandemic. The SC is increased annually. Italian municipalities may also receive ad hoc earmarked transfers targeted to specific needs, including for investment projects.

191. Along with municipalities, the regions are also entitled to collect charges and fees (e.g. on concessions made on regional public domain goods, on the right to study at a university, on phytosanitary activities.). The share of tariffs and fees in total SNG revenue is lower than in the OECD on average (10.6% v. 13.3% in 2020). SNG's may also collect revenue from business, commercial

42. Available at: https://www.eurac.edu/en/blogs/eureka/structure-of-local-revenues-a-comparative-analysis-of-italy-and-austria, accessed 7 February 2024.

activities and revenue from the ownership of property (sale of movable and immovable property), interests and dividends from state-owned companies. Some relevant pieces of legislation have been adopted, particularly concerning the attribution to the municipalities of a portion of the State's property ("public proper federalism").

192. The following table offers a picture of the evolution of municipal revenues and its different sources from 2017 (the year of the previous monitoring report) to 2021:

Main revenues sources of municipalities in 2017 and 2021

BALANCE BREAKDOWN (MAIN REVENUES)	2017		2021	
	Tot. amount (euro)	Share of total(%)	Total amount (euro)	Share of total (%)
Title 1 -Tax and equalisation fund revenue	39 126 587 610	38.0	39 948 484 318	36.7
Tax revenue	32 921 700 722	32.0	33 249 289 075	30.5
Municipal real estate tax (IMU)	13 725 968 753	13.3	15 958 021 679	14.7
PIT surchage	4 585 795 643	4.5	4 853 398 103	4.5
Tourist tax	320 321 233	0.3	296 188 278	0.3
Municipal tax on waste (TARI)	6 612 896 230	6.4	7 560 919 576	6.9
Tax on occupation of public space (TOSAP)	216 969 001	0.2	71 741 632	0.1
Municipal tax on advertising and right on public billboards	446 522 673	0.4	52 942 912	0.0
Municipal tax on waste – old tax year (TARES)	4 011 634 237	3.9	3 160 434 437	2.9
Tax on indivisible service (TASI)	1 059 279 729	1.0	135 651 090	0.1
Other taxes revenue	1 942 313 223	1.9	1 159 991 367	1.1
Tax shares	108 968 150	0.1	71 142 272	0.1
Equalisation fund	6 095 918 738	5.9	6 628 052 972	6.1
Equalisation fund from central state	6 054 005 980	5.9	6 597 429 597	6.1
Equalisation fund from regions	41 912 758	0.0	30 623 375	0.0
Title 2 -Currenttransfers	9 607 448 536	9.3	16 000 256 402	14.7
Title 3 -Tariffs	13 466 074 529	13.1	12 747 908 426	11.7
Title 4 -Capital revenue	8 300 553 808	8.1	13 895 983 501	12.8
Title 5 -Financial assets reduction	914 606 346	0.9	1 046 386 941	1.0
Title 6 -Loans	1 043 119 529	1.0	1 715 260 038	1.6
Title 7 -Cash advance	9 624 472 409	9.4	4 245 391 782	3.9
Title 9 -Clearing entry	20 774 200 502	20.2	19 318 072 507	17.7
Total revenue	102 857 063 269	100	108 917 743 914	100

Source: Ministry of Economy and Finance elaboration from Ministry of Economy and Finance/ Italian National Institute of Statistics (Istat) data. Total amount and share can vary due to rounding.

193. In the table above, the following developments, between 2017 and 2021 are shown: the total amount of municipal revenue has increased (by about +5.9%), while the revenue structure (share of total) has remained quite stable; and the equalisation fund from the central State represents about 6% of total revenues. Concerning some of the different sources of municipal, it can be noted, for instance, that revenue from the real estate tax (IMU) has increased considerably, while revenue from the tax on indivisible service (TASI) has decreased considerably.

194. Concerning the financial situation of provinces, it should be pointed out that before the referendum of 2016 which rejected, among other changes, the elimination of provinces as a second tier of local self-government, there were several measures with negative effects on the financial situation of the provinces. First, the financial legislation of the period 2013-16, together with the institutional review under Law No. 56 of 7 April 2014 and the reduction of tax revenues, has led toa reduction of resources amounting to €4.25 billion, with severe repercussions on their capacity to perform their functions. Second, the Stability Act of 2015 established that provinces and metropolitan cities should contribute to the containment of public expenditures through a reduction of running costs (linear cost or *tagli lineari*) of € 1 billion (€900 million for the provinces of the ordinary regions and

€100 million for the provinces of Sicily and Sardinia). This reduction should reach €2 billion in 2016 and €3 billion in 2017.

195. Taking into consideration these (and other developments), the last monitoring report of the Congress (2017) and its associated Recommendation 404 (2017) highlighted in particularthe problem of the inadequate financial resources available to provinces and their overall precarious situation. Therefore, developments concerning the revenue of local authorities since 2017 should be reviewed.

196. According to information provided by the Ministry of Economy and Finance, since 2017, from the financial perspective, the implementation of the fiscal federalism process in provinces and metropolitan cities has been recalibrated to correctly apply the Law No. 42/2009 and reduce the financial difficulties of this level of government. In recent years, the central government has funded targeted grants to provinces and metropolitan cities to ensure provision of the necessary resources to perform their fundamental functions. The transfers, however, have not guaranteed a full budgetary planning capacity for provinces, since these transfers have been extraordinary and non-continuous, intending to rebalance the contribution of these local authorities to public finances and to support investments.

197. The budget laws for 2021 and 2022 have defined a new financial structure for provinces and metropolitan cities, under the design of fiscal federalism. Two specific funds - one for provinces and one for metropolitan cities - have been created. In addition, a new f central contribution to finance fundamental functions has been defined, based on standard needs and fiscal capacities. The key principle of these policies is to share the experience of municipalities with the other levels of governance and move on from the application of “historical spending criteria” for local governments.

198. In particular, with the Budget Law for the financial year 2021, the following measures have been introduced: rules for guaranteeing the definitive financial structure for this level of governance, and a mechanism for equalising resources, which progressively takes into account the difference between standard needs and fiscal capacity, by following the experience of municipalities.

199. Moreover, the regulatory and financial reforms that were introduced in the following year, 2022, have the following characteristics. The distribution of resources in the two funds (one for the provinces and one for the metropolitan cities) followed the introduction of an equalisation mechanism that progressively takes into account the difference between standard needs and fiscal capacity, as approved by the Technical Commission for Standard Needs (CTFS).The allocation of a new State contribution amounted in 2022 to €80 million, which will gradually increase up to the amount of €600 million on a structural basis by the end of 2031. This fund should finance the core functions of provinces and metropolitan cities.

200. The updating of standard needs for the basic functions of provinces and metropolitan cities had began in 2021. For these levels of government, it was necessary to identify novel methods for estimating the requirements of the additional fundamental functions that these entities are called upon to perform in addition to the functions of ordinary provinces. The CTFS, with the assistance of the Department of Finance of the Ministry of Economy and Finances, has begun the analysis of revenues to configure the definition of the standard fiscal capacity of such levels of government. The resources needed to finance the basic functions of these entities have been estimated at approximately €2 771 million.

201. The fiscal capacity of these entities has been estimated to €3 061 million euros. Fiscal capacity has been calculated by applying standard rates,. net of the tax effort, for the following tax revenues: a) tax on motor vehicle liability insurance; b) Provincial Registration Tax (IPT), c) environmental tax (TEFA); and d) additional tax revenues. In January 2022, the CTFS finally approved the operational modalities of the two equalisation funds and their distribution for the period 2022-2024.

202. The specific fund allocated to the provinces will amount to approximately €1 062.2 million, while that designated for the metropolitan cities will be around €271.7 million euros. The combined total for the second tier of local government will be €1 333.3 million euros. On the other hand, the overall contribution of the second tier of local self-government to public finance is estimated to be €2 769 million. This total comprises €1 998 million from provinces and €771 million from the metropolitan cities The net contribution to public finance is calculated as the difference between these two aggregates: approximately €1 435.2 million are transferred to the State, with €936.2 million

contributed by the provinces and €499 million by the metropolitan cities. Despite the additional contribution stipulated by the 2022 Budget Law, a deficit of resources for funding the fundamental functions of provinces and metropolitan cities persists according to the analytical allocation plan.

203. The revenue system of provinces is currently made up of:
- provincial-own taxes relating to road transport, like the provincial registration tax (Imposta Provinciale di Trascrizione), and the tax on motor vehicle liability insurance (Imposta sulla Rc auto);
- co-participation to the motor vehicle tax that replaces the regional transfers previously abolished, under Article 19 of Legislative Decree No. 68/2011. Although the aforementioned rule should have been applied by 20 November 2012, this is not yet the case;
- other derived own taxes, as recognised for the provinces by current legislation.

204. The latter categoryincludes the following revenues:
- the property fee for concession, authorisation or advertising display (Canone unico patrimoniale per occupazione di suolo pubblico e pubblicità), as defined by the Article 1 paragraph 816 of the Law No. 160/2019, which replaces the fee for the occupation of public spaces and areas;
- the special tax for the landfilling of solid waste, as defined by the Article 3 of Law No. 549/1995;
- the so-called environmental tax, as defined by the Article 19 of Legislative Decree No. 504/1992;
- the fee for admission to competitions, as defined by the Article 1 of Royal Decree No. 2361 of 21 October 1923;
- administrative/secretarial fees, as defined by Article 40 of Law No. 604 of 8 June 1962.

205. From an equalisation perspective, financial resources are provided by the *Fondo Sperimentale di Riequilibrio* (Experimental Rebalancing Fund), as defined by the Prime Ministerial Decree of 12 April 2012, for the suppression of transfers amounting to €1 039.9 million. Despite its initial purpose of facilitating the progressive and balanced implementation of the provinces' revenue autonomy, this fund has not resulted in a reduction of transfers based on historical resource criteria.

206. The transition from the system based on historical resources to the equalisation system, envisaged by the decrees implementing the fiscal federalism, has not been achieved, also as a result of the significant reduction in resources allocated to the provincial sector, brought about by the public finance laws implemented since 2010.

207. From a financial point of view, the public finance measures have ensured the contribution to public finance of the provinces through measures to reduce resources allocated to them, as in the case of the reduction of the Fondo Sperimentale di Riequilibrio. This has been implemented by: a) using instruments aimed at tightening budgetary targets (Internal Stability Pact); and b) imposing higher current expenditure savings, starting from the reform initiated by Delrio Law No. 56/2014, which defined an annual reduction of about €3 billion for provinces.

208. In recent years, to guarantee the financial equilibrium of the provinces, extraordinary measures have been activated to ensure financial support to the provinces and metropolitan cities for the exercise of their functions. Among these the most important functions are school construction and the maintenance of road network infrastructures.

209. Some financial contributions have been progressively developed in favour of provinces and metropolitan cities to re-absorb the financial restrictions sustained by such levels of government – particularly those allocated in the years from 2015 to 2017. The Ministry of the Interior is directly responsible for the payment of such contributions to the central government budget. If the aforementioned transfers exceed the contribution to public finance, the Ministry of the Interior provides the excess resources to the specific province affected.

210. The following table illustrates the breakdown of revenues attributed to provinces and metropolitan cities for 2017 (the year when Recommendation 404 (2017) was issued) and 2021.

Provinces and metropolitan cities revenues in 2017 and 2021

BALANCE BREAKDOWN (MAIN REVENUES)	2017		2021	
	Total amount (euro)	Share of total (%)	Total amount (euro)	Share of total (%)
Title 1 – Tax and equalisation fund revenue	4 358 842 730	42.2	4 218 384 909	38.0
Tax revenue	4 126 086 684	40.0	4 009 709 489	36.1
Local tax on public liability insurance (RCA)	2 022 920 252	19.6	1 913 843 063	17.2
Motor vehicle public register tax (IPT)	1 649 888 340	16.0	1 665 154 898	15.0
Provincial tax on waste (TEFA)	396 299 806	3.8	414 101 960	3.7
Other tax revenue	56 978 286	0.6	16 609 568	0.1
Tax shares	67 810 343	0.7	58 240 358	0.5
Tax on waste share	12 588 973	0.1	9 402 075	0.1
Other tax shares	55 221 370	0.5	48 838 283	0.4
Equalisation fund from the central state	164 945 702	1.6	150 435 062	1.4
Title 2 – Current transfers	2 923 962 560	28.3	2 367 610 363	21.3
Title 3 – Tariffs	644 255 787	6.2	678 694 567	6.1
Title 4 – Capital revenue	770 402 887	7.5	2 416 526 261	21.8
Title 5 – Financial assets reduction	236 437 090	2.3	25 409 326	0.2
Title 6 – Loans	46 107 379	0.4	48 301 989	0.4
Title 7 – Cash advance	243 401 032	2.4	204 259 252	1.8
Title 9 – Clearing entry	1 097 942 066	10.6	1 147 657 335	10.3
Total revenue	10 321 351 531	100	11 106 844 003	100

Source: Ministry of Economy and Finance elaboration from Ministry of Economy and Finance/Italian National Institute of Statistics (Istat) data. Total amount and share can vary due to rounding

211. From 2017 to 2021, the following patterns may be identified for provinces and metropolitan cities: the total amount of revenue has increased (by 7.6%); the revenue structure (share of total) has changed with a relevant reduction of the importance of current transfers (from 28.3% to 21.3%) and there was a considerable raise in the importance of capital revenues.

212. The gradual but deep decentralisation process has led to a strong increase in SNG expenditure. In 2020, SNGs spending accounted for 15.5% of GDP and 27.2% of public expenditure. Nevertheless, these figures remain below the OECD average (17.1% and 36.6% respectively) and the EU27 average (18.3% of GDP and 34.3% of public expenditure). Regions represented close to 68% of SNG expenditure, while municipalities represented 30% of total SNG expenditure with provincial IMC bodies and metropolitan cities representing the remaining 2%. SNG staff expenditure accounted for 39.0% of public staff expenditure in 2020, which is below the OECD and EU27 average (61.2% and 53.6%, respectively).

213. In Italy, SNGs play an essential part in public investment. SNG direct investment accounted for 56.0% of public investment in 2020, above the OECD (54.6% in 2020) and EU27 averages (54.4%). The bulk of direct investment is made by regions. Since the economic crisis, consolidation measures and tightening of constraints under the Internal Stability Pact has led SNG investment to sharply

decline and it has not yet fully recovered. SNG direct investment accounted for only 1.5% of GDP in 2020, which is below the OECD and EU27 averages (1.9% and 1.8% of GDP).

214. In order to support local investment, the 2020 budget law has strengthened investment measures for local governments. This means that municipalities will now receive up to €500 million annually for the years 2020-24 to finance small projects focused on energy efficiency and sustainable territorial development. Additionally, the State will provide contributions to municipalities for urban regeneration projects, investments in cycling, the construction and renovation of nurseries, executive planning, and social infrastructure in some municipalities, until 2034. Provincial IMC bodies and metropolitan cities will receive subsidies for extraordinary road and school maintenance. The central government has also established a territorial investment fund under its 2020 Stability Programme, which will amount to up to €400 million annually from 2025 to 2034.

215. Expenditure of local authorities is subject to a series of rules, principles, and control mechanisms. The constitutional reform of 2001 incorporated the local authorities into the pre-existing (1999) Internal Stability Pact that had been launched to ensure that Italy would comply with obligations stemming from the fiscal regime of the EU. Constitutional Act No. 1/2012[43] introduced the principle of balanced budgets in structural terms and banned the use of debt to finance the deficit. The Internal Stability Pact,, for its part, is being updated and approved yearly, it sets targets for fiscal balances and limits on expenditure growth, as well as borrowing limits.

216. Since 2003, a system of sanctions has been set up for non-complying municipalities, in the form of transfer cuts and freezes on hiring local staff. The Parliamentary Budget Office (*Ufficio Parlamentare di Bilancio* - UPB), whose autonomy is referred to in the 2012 Constitutional Act, has the mandate to analyse and monitor public finance developments, including at the subnational level, and evaluate compliance with budget rules.

217. The Observatory on the Finance and Accounting of Local Authorities (*Osservatorio sulla finanza e la contabilità degli Enti locali*) is another mechanism established at the Ministry of the Interior as required by Article 154 of TUE and according to the founding Ministerial Decree of 7 August 2015. The Observatory promotes the sound management of financial, instrumental, and human resources, the operation of balanced budgets, the application of accounting principles and the adequacy of application tools, as well as experimentation with new accounting models. Periodically, the Observatory monitors the local public finance situation through studies and analyses, also through data provided by the Central Local Finance Directorate; it periodically verifies the effects produced by the application of the new accounting standards on the economic-managerial balance of the local authorities involved, as well as on the local authorities that have resorted to the multi-year financial rebalancing procedure;[44] and it prepares insights and opinions on general issues requested within the Permanent Conference, and so on.

218. Since 2019, the Constitutional Court's Sentences No. 247/2017 and No. 101/2018, addressing public finance rules, have stated that regions, the Autonomous Provinces of Trento and Bolzano, metropolitan cities and municipalities must contribute to the objective of achieving a net borrowing balance at the national level, in accordance with the Internal Stability Pact. Consequently, as of 2019, all SNGs are required to adhere to budget balance rules at both the individual institution level (i.e. maintaining a non-negative final and current account, and a non-negative final cash balance) and at the sector level.

219. As with to other European countries, the outbreak of the economic and financial crisis in the previous decade had notable and long-lasting impacts on the financial regime and the system of controls imposed on local authorities. Financial and budgetary controls have been multiplied, and binding targets, rules, and principles that restricted the freedom of spending including for money originating from own resources were introduced, with the justification that they were necessary or even indispensable to attain different objectives in the struggle against the public deficit and to succeed with the execution of a balanced budget and other stability objectives.

220. Next to the creation of new mechanisms, these developments also had a profound impact on the oldest institution that is responsible for financial supervision and controls, namely the Court of Audit

43. Constitutional Law of 20 April 2012, No. 1, in *Official Gazette* No. 95, of 23 April 2012.
44. Article 243-bis of the legislative decree of 18 August 2000, No. 267.

(*Corte dei Conti*) which is an independent institution established by the Italian Constitution (Article 100 enshrines its powers). The Court of Audit carries out the "ex ante" audit on government acts and the compliance, financial and performance audit on the State budget and local government budgets. The Court of Auditor supervises, among other things, all financial and budgetary and financial operations of local governments. In doing so, it performs different types of controls and finding and verification practices. These powers are constitutionally enshrined in Article 81 of the constitution which establishes the principle of budgetary balance. Currently, this independent institution performs a key role in the control of local (and regional) accounting, budgeting, and public expenditures. Since 2003 it has carried out a "verification" on budgetary balance as respected by municipalities, provinces and metropolitan cities. This role has been dramatically reinforced by the successive annual stability plans and by different pieces of legislation, especially Act No. 213 of 2012. In this sense, the Court of Audit enjoys increased power to carry out its "verification" powers. While confirming a collaborative nature audit, the Regional Audit Chambers verify, mostly on an annual basis, the legality and regularity of the management, the functioning of internal controls and the budget balance as well as the respect of the annual stability objectives and the debt constraints established by Article 119 of the constitution. They verify the implementation of the measures addressed to the rationalisation of public expenditures of local bodies (the so-called spending review) and in some circumstances (negative result in the audit activity) may determine prohibitive measures, as well as procedures concerning financial bailout plans.

221. Returning to the question about "adequate resources", the rapporteurs ackownledge that the answer cannot be the same for all cases. Municipalities seem to be in a better position than some years ago, but the situation can be very different depending on the size and the wealth of the city. The City of Bologna, for instance, has "a great deal of financial autonomy", according to local interlocutors. Working on a budget of €1.4 billion, its own revenue covers 82% of current spending. The city pursues active policies against tax evasion, seeks to exploit alternative revenue sources and promotes public-private partnerships (PPP). A big share of city spending is attributed to education, culture, and social services, while climate change (€847 million received from the State, including to cope with floods and their effects), energy efficiency, and housing were characterised as the major challenges.

222. On the other hand, the Mayor Fontana Liri, a small municipality in the Lazio Region emphasised to the rapporteurs that small municipalities do not have adequate financial resources to meet the needs of their citizens. In such cases, however, it is the equalisation mechanism that is called upon to help municipalities that are short of resources despite their efforts. Compared to most of the municipalities, provinces seem to be facing more severe financial problems, as it is admitted even by State sources/interlocutors.

223. Concerning the freedom to dispose of financial resources within the framework of their powers, local authorities in Italy are subject to a series of restrictions and several controls from different bodies and authorities. While the need for sound fiscal management and the constitutionally provided principles of a balanced budget and the so-called "golden rule" (borrowing only for investment) cannot be put into question, the intensity and the complexity of financial restrictions and controls create serious concern about the margin of spending discretion that is left to the local authorities. Another serious problem is the obligation of the provinces (and to a smaller amount, of the metropolitan cities) to transfer significant amounts to the State.

224. In light of the above, the rapporteurs conclude that Italy partially complies with Article 9, paragraph 1.

3.8.2 Article 9.2

225. Article 9, paragraph 2 states that the revenues and mandatory tasks of local authorities should be balanced to ensure that the financial resources available are satisfactory in comparison to the tasks assigned by law. Any new tasks assigned or transferred to local authorities must be accompanied by corresponding funding or a source of income to cover the extra expenditure. As the Contemporary Commentary points out, any transfer of powers and tasks should be based on careful calculation of the actual service delivery costs to be met by local authorities. The cost of local services should be regularly checked and updated, as the costs estimated when a function is transferred/assigned may differ from those incurred in the actual delivery of services and the development of a service.

226. The constitution introduces the commensurability principle in Article 119, paragraph 4: “Income raised from the afore-mentioned sources shall enable municipalities, provinces, metropolitan cities and regions to fully finance the public functions which pertain to them”. In a relevant case, the Constitutional Court found that the principle of commensurability had been violated by the legislation of the Piemonte Region which delegated tasks to local authorities without the corresponding resources.[45]

227. AICCRE has stated to the rapporteurs that, in general, the resources of local authorities are not proportionate to the responsibilities assigned to them. While this can create difficulties, it also forces administrations to make careful and virtuous policies. In any case, the current f financial resources of regions and local governments does not fully account for the standard expenditure needs and fiscal capacities of such governments, since it is still calculated on the basis of “historical spending” criteria. This implies that current resources are allocated by updating previous financial allocations. AICCRE also underlined that the delegation of new tasks is not always accompanied by adequate financing, especially in the environmental sector.

228. The FSC is funded by the share of IMU that belongs to the municipalities themselves, and whose resources are distributed with the goal of both compensating for the resources allocated in the past and equalising them, and progressively abandoning historical expenses. The application of equalisation criteria in the distribution of resources, based on the difference between fiscal capacity and standard requirements, began in 2015 with the allocation of gradually increasing shares of the FSC, to achieve 100% equalisation in the year 2030. For 2022, the percentage of the FSC’s resources to be distributed with the equalisation criteria was 60%.

229. The cuts made by public finance measures have affected the functioning of the FSC, especially in terms of the distribution of resources, which were fed exclusively by the municipalities through their own IMU revenues. With the last three budget laws, the endowment of the fund was increased with State resources that are part of the equalisation system. The increase in the FSC allocation was specifically established to perform several fundamental functions in the social field, in particular: the strengthening of social services, the expansion of daycare services, and school transportation services for disabled pupils, to be allocated taking into account standard requirements. To ensure that the additional resources are effectively allocated to the enhancement of the aforementioned services, the rules provide for the setting of specific service targets for municipalities and the activation of a system for monitoring and reporting on the use of resources to ensure that certain levels of service provision are achieved.

230. Nevertheless, resources are not yet commensurate to the responsibilities of local authorities. Once again, the provinces face the biggest problems, since they have €850 million less funding than they need to perform their tasks, according to the calculations of their association (UPI) that were provided to the rapporteurs.

231. Taking the above into consideration, the rapporteurs conclude that Italy partially complies with Article 9, paragraph 2 of the Charter.

3.8.3 Article 9.3

232. The explanatory report to the Charter points out that “the exercise of a political choice in weighing the benefit of services provided against the cost to the local taxpayer or the user is a fundamental duty of local elected representatives. It is accepted that central or regional statutes may set overall limits to local authorities' powers of taxation; however, they must not prevent the effective functioning of the process of local accountability”.

233. According to the Contemporary Commentary, the power to levy local taxes and charges is not only an important source of funding for local authorities but also direct evidence of local financial autonomy, where local authorities are entitled to raise revenues according to the local situation (i.e. socio-demographic and socio-economic conditions) and make political choices influencing the behaviour of residents and companies, fostering local economic development. In light of Article 9,

45. Corte Costituzionale, Sentenza 10/2016, available at:https://www.cortecostituzionale.it/stampaPronunciaServlet?anno=2016&numero=10&tipoView=P&tipoVisualizzazione=O, accessed 7 February 2024.

paragraph 3, a tax is a genuine local tax only if the local authority is entitled to determine the rate within the limits that may be determined by law.

234. As already shown in the comments to Article 9, paragraph 1, municipalities and provinces have several local taxes, fees, and charges that they can freely set the rates for within a band of rates that are determined by the applicable tax legislation. Own sources represent the main source of revenue for municipalities (see above). Representatives of AICCRE have emphasised that local authorities can determine their taxation within the limits imposed by national laws. In many cases, taxes and duties at the local level would already be close to the upper legal limits. These limits sound reasonable since higher local taxation could increase inequalities.

235. In light of the above, the rapporteurs conclude that Italy fully complies with paragraph 3 of Article 9.

3.8.4 Article 9.4

236. According to the Contemporary Commentary, the principle of diversification of income sources is crucial if local authorities are to maintain their autonomy during fluctuations in economic fluctuations. The diversification of revenues is a key aspect of financial autonomy, reflecting the ability to generate or adjust revenues. In this way, even though the different sources of local authorities' income may be shaped by national economic policy, municipalities will have room for manoeuvre to offset the economic difficulties resulting from one specific source of income.

237. The second principle introduced by this paragraph is "buoyancy", which means that local finances should be able to adapt to new circumstances, needs and macro-economic scenarios and be sufficient to cover service delivery. There are many manifestations of this principle. Firstly, transfers from regional or national bodies should be updated and possibly increased over the years to take account of price increases, or factors involved in the delivery of services. Secondly, local authorities should also be allowed to increase their tax rates where such a decision is necessary owing to inflation. Finally, any decision by higher-level authorities to impose additional costs on local authorities should ensure that these costs are covered by new financial resources (ie.g. new financial transfers, grants) or by an increase in existing resources. Accordingly, any delegation of tasks that does not indicate the source of funding to meet the cost of the new responsibility is not compatible with the principle of buoyancy.

238. The Italian system of local finances complies with the first principle (diversification) since income sources for both municipalities and provinces are sufficiently diversified. Concerning the principle of "buoyancy", there were certainly problems of non-compliance during the economic crisis, due to rigid austerity policies that had to be implemented. Italy is now gradually moving away from this phase and efforts are being made to introduce new resources and, in addition, more realistic, cost-based, and topical criteria for the allocation of revenue (see comments on Article 9, paragraph 1 and 2).. Nevertheless, the rapporteurs would like to point out that several interlocutors (the representatives of INDC, for instance) have complained that some local authorities are missing opportunities for funding (e.g. through the NRRP) and development because they are short of the financial resources that are necessary to be able to take advantage of such opportunities. The representatives of State authorities on the other hand, have acknowledged these problems, but they assured the rapporteurs that they are working on it and relevant solutions are underway.

239. Therefore, the rapporteurs conclude that Italy complies with this paragraph.

3.8.5 Article 9.5

240. According to the relevant OECD definition, "fiscal equalisation is a transfer of fiscal resources across jurisdictions with the aim of offsetting differences in revenue-raising capacity or public service cost".[46] The Contemporary Commentary on the Charter emphasises that fiscal equalisation is country-specific since it is shaped by the wider institutional framework such as the size, number and geographical distribution of local governments and the responsibilities and fiscal resources allocated to each type of authority. Some equalisation arrangements involve the simple redistribution of fiscal resources while others help central governments closely shape and adapt public service delivery at

46. Blöchliger, H. et al. (2007), "Fiscal equalisation in OECD countries", Working Paper No. 4, OECD Network on Fiscal Relations Across Levels of Government: Fiscal Equalisation in OECD countries, p. 57

the local level. The Charter uses the term “financial equalisation procedures or equivalent measures” with the aim of including a range of different institutions, mechanisms and arrangements designed to edress the effects of the uneven distribution of funding.

241. The Contemporary Commentary points out that equalisation transfers must be regarded as local authorities’ own resources, “of which they may freely dispose in the exercise of their powers”. Although the methods in domestic legislation for calculating financial equalisation frequently employ expenditure parameters in specific sectors (example.g. educational needs and environmental liabilities), municipalities must be free to use them according to their discretion (as Article 9, paragraph 5 explicitly requires). Classifying equalisation transfers as “own resources” implies that these funds cover only the costs incurred in performing local and mandatory tasks; they do not cover those incurred in the exercise of delegated powers. For these delegated tasks, a separate – vertical – mechanism for transferring funds must be put in place following Article 9, paragraph 2 of the same article (the “commensurability” principle).

242. In Recommendation 404 (2017) the Congress has expressed its concern, regarding “the inefficiency of the equalisation system for smoothing out the differences in financial resources among regions” (Article 9, paragraph 5). It further called upon the Italian authorities to revise the current formula of the equalisation system to smooth out the differences in financial resources of regions based on the principle of territorial solidarity. The financial situation of Italian regions will be dealt with in a different part of this report. Recommendation 404 (2017) however, is also relevant for the local authorities since they are affected by regional disparities.

243. Article 119, paragraph 3 of the Italian Constitution provides that “state legislation shall provide for an equalisation fund – with no allocation constraints – for the territories having lower per-capita tax-raising capacity”. The Fondo perequativo is a fiscal qualization tool introduced by Constitutional Law No. 3/001, whichdistinguishes the different levels of government (regions, provinces and municipalities) and the nature of the expenditure items. In the case of essential services, the Fondo perequativo should compensate for any imbalance between tax revenues of the regions and allow them to provide services under their competence to uniform levels throughout the national territory; in the case of other expenditure items, it aims to compensate those local levels of government with a lesser fiscal capacity.

244. The FSCas defined by Law No. 42/2009 and Legislative Decree No. 23/2011, has the objective of allocating resources to the municipalities. Its financial coverage is provided by a share of IMU, which means by revenue belonging to the municipalities themselves. These resources are distributed to both compensate for the resources allocated in the past and equalise them, to progressively abandon criteria of historical expenses. The application of equalisation criteria in the distribution of resources, based on the difference between fiscal capacity and standard expenditure needs (“*fabbisogni standard*”) began in 2015 with the allocation (according to equalisation criteria), of gradually increasing shares of the FSC, to achieve 100% equalisation in the year 2030. For 2022, the percentage of the FSC’s resources to be distributed with the equalisation criteria was 60%.

245. Regarding the criteria for the distribution of the FSC, as defined by Law No. 232/2016 (paragraph 449), there is a distinction between its two different components of the: the “traditional” one, which aims to rebalance historical resources, and the “restorative” one, which was confirmed by the 2016 Budget Law. The so-called “"restorative” part, which amounts to €3 767.45 million, is distributed among the municipalities on the basis of IMU and TASI (property and service tax) revenues for the year 2015, as resulting from the application of the new exemption system introduced by the 2016 Stability Law. In addition, the replenishment quota was later reduced by about €14.2 million per year starting from the Budget Law for the year 2020.

246. The remaining part of the FSC’s resources, which constitutes the so-called “traditional” component, has been quantified by the 2017 Budget Law to be equal to €1 885.6 million for the municipalities of the ordinary regions, and €464.1 million for the municipalities located in Sicily and Sardinia Regions. For the municipalities of the ordinary regions, the traditional component is distributed in two steps: the first step is distributed according to the historical resources equalisation criterion; the second is distributed according to equalisation-type criteria based on the difference between fiscal capacity and standard needs.

247. The application of the equalisation criteria relates to the municipalities of the ordinary regions. For Sicily and Sardinia, where the financing of the local authorities is still borne by the central government, the distribution is made on the basis of the sole criterion of equalisation of historical resources.

248. The cuts made by public finance measures, during the austerity era[47] have affected the functioning of the FSC, especially in terms of the distribution of resources, which were fed exclusively by the municipalities through their own IMU revenues ("horizontal equalisation"). With the last three budget laws, the endowment of the fund has increased, due to State resources that became a part of this equalisation system which now includes a vertical dimension.

249. The increase in FSC allocation was specifically established to support a few targeted fundamental functions in the social field, in particular: the strengthening of social services, the expansion of daycare services and school transportation for disabled pupils, which must be allocated while taking into account standard requirements. As for the criteria regarding equalisation, a process of revision of the standard needs was developed in the period 2020-21. Specifically, the standard needs will be dissociated from the quantitative levels historically provided by each entity and will correspond to the standard level of services to be guaranteed throughout the national territory. To ensure that the additional resources are effectively allocated to the enhancement of the aforementioned services, pertinent rules provide for the setting of specific service targets for municipalities and the activation of a system for monitoring and reporting on the use of resources to ensure that certain levels of service provision are achieved.

250. It should be noted that an experimental estimate of the standard needs and fiscal capacity for the municipalities of Sicily and Sardinia (absent for the other special autonomies) is provided. The definition of the minimum level of service provision (LEPs) for all functions is not operational, for the time being, but targets for the social sector were already identified in 2021; they are expected to be redefined for social services, education, and nursery functions.

251. On the other hand, to correct the distortions in the redistribution of resources, different corrective mechanisms have been implemented. The so-called statistical correction in the distribution of FSC resources was introduced to limit the variations, both upwards and downwards, in the resources allocated to each municipality concerning the historical resources. This corrective mechanism was redefined by the Budget Law for 2017 – it is to be applied if the equalisation criteria of distribution determine a variation, either upwards or downwards, in the resources allocated to each municipality concerning the reference resources, from one year to the next, that is greater than a certain percentage. This percentage was set at 8% in 2017 and 4% in 2018, following the Law No. 50/2017 (Article 14) and is meant to mitigate the effects resulting from the application of the corrective mechanism, especially for those municipalities that have a fiscal capacity higher than their standard needs. The corrective mechanism is activated when there is a gap of 4% between the resources available to municipalities, as resulting from the application of the equalisation mechanism, and those deriving from the historical reference resources.

252. Law No. 124/2019 (Article 57, paragraph 1-bis) has provided a specific correction in favour of small municipalities with a population of less than 5 000 which, after the application of the distribution criteria, continue to have a negative FSC value. It has been established that for such municipalities the FSC will be increased to a maximum of €5.5 million from 2020. For very small municipalities with a population of up to 5 000 inhabitants or those formed following the merger of municipalities each of which had a population of up to 5 000 inhabitants, Law No. 158/2017 has defined specific measures with the aim of promoting sustainable development, demographic balance and reducing outflow migration, encouraging people to stay in these municipalities. These measures also have the objectives of protecting and enhancing the natural, rural, historical, cultural, and architectural heritage, and the system of essential services.

253. The creation of a Fund for the Structural, Economic and Social Development of Small Municipalities is a key target in this field since it is intended to finance investments in the protection of the environment and cultural heritage, the reduction of hydrogeological risks, and, the protection and urban rehabilitation of historic centres. This Fund is meant to guarantee the safety of road

47. For a critical review see Citroni G., Lippi, A. and Profeti, S. (2019) "In the Shadow of Austerity: Italian Local Public Services and the Politics of Budget Cuts", in Lippi, A. and Tsekos, T. (eds.) *Local Public Services in Times of Austerity across Mediterranean Europe*, Palgrave Macmillan, Basingstoke, pp. 115-140.

infrastructure and schools, the promotion of economic and social development and the creation of new productive activities. It had an initial allocation of €10 million for the year 2017, and €15 million from 2018 to 2023: from 2018, it is expected an annual increase of €10 million, bringing the total amount of the funding to €160 million.

254. Additional measures are included in Law No. 158/2017, which defines the deployment of ultra-wideband infrastructure and e-government programmes in the territories of small municipalities, the use of postal services for payments, and the consumption and marketing of agricultural and food products from short supply chains or by the kilometre.

255. As for the equalisation system of provinces and metropolitan cities, the definition of standard needs began in 2021. Based on the estimation of standard needs and fiscal capacities, the first year of operation of the equalisation fund is 2022. Specifically, the fund for the provinces would amount to €1 062.2 million and that for the metropolitan cities would amount to €271.7 million. The two funds were expected to be increased by €80 million in 2022, €100 million in 2023, and €130 million in 2024, with resources provided by the central government. The additional central resources will be distributed between the two funds based on a weighted scheme obtained by comparing the total standard needs and the total fiscal capacities net of the difference between the current funds and the contribution to public finances.

256. The equalisation fund is an additional mechanism for horizontal rebalancing and vertical integration of resources (€600 million). Adequate estimation is provided for standard needs and fiscal capacity; relevant equalisation will be achieved through the redistribution of the provinces' contribution to public finance with the equalisation criteria.

257. Fiscal federalism (which began in 2008/09) will be completed in 2029, and the equalisation system will e completed by the year 2030 with a focus on childcare/the disabled, students, social services and also collaboration for refugees. That said, the current amount of financial resources of regions and local governments does not fully take into account the standard expenditure needs and fiscal capacity of such governments, since it is still calculated on the basis of "historical spending" criteria. This implies that current resources are allocated by updating previous financial allocations.

258. Taking into consideration the above and also their discussions with representatives of State and local authorities, the rapporteurs come to the conclusion that after some years of setbacks during the austerity era, equalisation mechanisms are being widened and strengthened. Therefore Italy complies with Article 9, paragraph 5 of the Charter.

3.8.6 Article 9.6

259. According to the explanatory report to the Charter, when redistributed resources are allocated according to specific criteria set out in legislation, the provisions of Article 9, paragraph 6 will be met if the local authorities are consulted during the preparation of the relevant legislation. According to the contemporary commentary on the Charter, under Article 9, paragraph 6, consultation is not merely a compulsory procedure that has to take place in a timely manner before a final decision is made. It must also cover the way a decision is made and the criteria for doing so, not just the decision itself. Taking into consideration issues recurring in monitoring reports, the Congress has called for greater involvement of local authorities or their representatives in financial matters, including estimating the costs involved with any new State legislation that must be implemented at the local level.

260. In the relevant Recommendation 404 (2017) the Congress expressed its concern with regard to "the fact that in practice local authorities are not consulted regarding the adoption of the budget, in particular in case of the implementation of budget cuts by the central government (Article 9, paragraph 6)"; the Congress called upon the Italian authorities to "ensure that local authorities are effectively consulted, in law and in practice, through representatives of national associations, on financial matters which concern them directly".

261. With regard to the budgetary aspects, according to Article 3-bis of Legislative Decree No. 118/2011, the Commission for the Harmonisation of Territorial Entities (Arconet Commission) was created. This Commission was given the task of promoting the harmonisation of the accounting systems and budget schemes of territorial entities and their instrumental bodies and entities, excluding entities involved in the management of healthcare expenditure financed with resources

allocated to the National Health Service. Moreover, the Arconet Commission updates regulatory sources about monitoring and consolidating public accounts and strenghtens the links between general government accounts and the European System of Accounts.

262. In 2016, as defined by Law No. 208/2015, the Technical Commission for Standard Needs (CTFS) was created to analyse and assess the activities, methodologies and elaborations related to the determination of the standard needs of SNGs. The CTFS is comprised of 11 members, out of which 3 are representatives of the national associations of local authorities and 1 is a representative of the regions.[48] The Budget Law for 2022 significantly broadened the scope of intervention of the CTFS, by providing that allocations of resources for the functions falling within the competence of local authorities related to the LEPs must receive the prior opinion/view of the CTFS, supplemented by representatives of the competent ministries.

263. This was provided to foster tighter coordination between the interventions conducted by different levels of government, especially in the social sphere, avoiding overlaps and possible inconsistencies between multiple specific funds and ordinary resources. The CTFS also approves the methodology for the calculation of the fiscal capacity of ordinary regions . In addition, the CTFS defines the necessary basis for determining the allocation of the FSC to be distributed annually. The CTFS also performs similar functions for the provinces and metropolitan cities.

264. It should also be noted that the Italian system of consultation through conferences includes the Permanent Conference for the Co-ordination of Public Finance "*Conferenza permanente per il coordinamento della finanza pubblica*" which is responsible for discussion on the harmonisation/co-ordination of multilevel public finance issues. It operates within the Joint Conferenceand is regulated by Articles 33-37 of Legislative Decree No. 68 of 6 May 2011. This legal framework provides that this conference includes representatives of the different institutional levels of government and that it is assigned a plurality of tasks, attributable to some of the following major themes:

- public finance objectives by sector: the conference contributes to their definition, also carrying out control functions regarding their implementation and proposing interventions necessary for their compliance. The impulse from the conference operates in particular with regard to the convergence pact procedure referred to in Article 18 of Law No. 42/2009;
- equalisation funds: the conference is responsible for proposing criteria for their correct use, as well as powers to verify their application;
- functioning of the new financial order of territorial bodies and financial relations between the different levels of government: the conference has periodic verification functions. The verification concerns in particular the adequacy of the taxes taken as reference for the coverage of the standard needs relating to the "essential expenses" of the regions referred to in Article 10, paragraph 1, letter d) of Law No.42/2009, as well as the adequacy of the financial resources of each level of government for the functions performed, with powers to propose any changes;
- realisation of the path of convergence with costs and standard needs and service objectives and promotion of the conciliation of interests between the different levels of government interested in the implementation of the rules on fiscal federalism, whose periodic verification the conference is responsible. Costs, needs and objectives will be the subject of comparison and joint evaluation at the Joint Conference;
- opinion on the Economic and Financial Document for the preparation of the State budget law, in compliance with the provisions of the Article 10, paragraph 5, of Law No. 196 of 31 December 2009.

265. Interlocutors from the City of Bologna have confirmed that "channels of dialogue" with the State and the region are available and accessible, but that relevant procedures would be "extremely time-consuming". On the other hand, representatives of CRAP have emphasised that more consultation would be needed for the NRRP.

48. Decree of the President of the Council of Ministers of 23 February 2016, concerning the "Establishment of the Technical Commission for standard requirements", available at: https://www.mef.gov.it/ministero/commissioni/ctfs/documenti/Commissione_ fabbisogni_standard.pdf, accessed 7 February 2024. It should be mentioned that at the same time as the establishment of the Technical Commission for standard requirements was establishe, the Joint Technical Commission for the implementation of fiscal federalism (COPAFF) was abolished (Article 34 of Law No. 208, 28 December 2015).

266. Taking into consideration the aforementioned and the fact that after a period where urgent measures had to be taken due to the Eurozone-crisis the situation has been normalised and consultation procedures are nowadays being followed (even though improvement is needed in some respects, like the NRRP), the rapporteurs conclude that Italy complies with Article 9, paragraph 6.

3.8.7 Article 9.7

267. According to the explanatory report to the Charter, block grants or even sector-specific grants are preferable, from the point of view of local authority freedom of action, to grants earmarked for specific projects. It would, however, be unrealistic to expect all specific project grants to be replaced by general grants, particularly for major capital investments and projects funded by higher levels of governance. The Contemporary Commentary points out that the allocation of specific grants should be based on objective, transparent criteria justified by spending needs. A trend towards earmarked grants might limit local authorities" ability to exercise policy discretion; moreover, earmarked grants are subject to tighter government control, which is why they have been favoured as a tool for implementing EU and/-or central government policies.

268. As shown in the comments to Article 9, paragraph1, Italian municipalities rely mainly on their own resources and also on general grants. Earmarked grants are important, but their share is not considered to be higher than can be accepted by the Charter. Earmarked grants seem to be more important for provinces. Representatives of the Court of Audit have stressed the importance of earmarked grants for provinces and noted that the 2022 Budget Law increased funding for provinces (for bridges and overpasses), while a 3% increase was also provided for metropolitan cities. Concerning provinces, however, the share of earmarked grants is not dispproportionate.

269. The rapporteurs conclude that Italy complies with Article 9, paragraph 7 of of the Charter.

3.8.8 Article 9.8

270. According to the Contemporary Commentary, the law may establish requirements, procedures, criteria, limits, or ceilings concerning local authorities' financial activities but, in any event, those standards should not deter them from borrowing on the national capital market or make it extremely difficult in practice. Some restrictions imposed by national (or regional) governments on borrowing by local authorities aim to prevent excessive debt in those authorities and ensure their financial viability and liquidity. Public entities with low debts and high revenues have a greater capacity to carry out mandatory and even voluntary tasks, while municipalities with high debts and low incomes are less viable in the long run.

271. In its earlier Recommendation Rec(2005)1 on financial resources of local and regional authorities[49], the Committee of Ministers asked member States not to offer guarantees for municipal loans, except in exceptional cases; in pertinent guidelines attached (as an appendix), to this Recommendation, the Committee of Ministers called on the States, not to provide "implicit financial bail-outs that would otherwise eliminate the local authorities' (and their officials') accountability and result in wasted public resources". In Italy, the responsibilities of entities in a state of insolvency do not extend to the State. However, the State provides support measures for entities in difficulty, such as the Cash Advances Fund. This fund aims to ensure that public entities comply with the debt payment deadlines set by European directives.

272. Regarding debts of Italian municipalities, the European Court of Human Rights, on the other hand, ruled that municipal creditors should, especially when their claims have been recognised by a court decision, be paid off even from State resources. In Italy, an issue had arisen regarding over-indebted municipalities and the fulfillment of their obligations to third parties, especially when municipalities were in default. In such cases, private lenders should be able to turn to the Italian state, of which local authorities are also considered to be a part. If this possibility is not guaranteed, then it is a violation of the right to judicial protection, guaranteed by Article 6 paragraph 1 of the European Convention of Human Rights, and the right to property, protected by Article 1 of the first Additional Protocol to the Convention.[50]

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49. Adopted by the Committee of Ministers on 19 January 2005 at the 912th meeting of the Ministers' Deputies, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805db09e, accessed 7 February 2024.
50. See *De Luca v. Italy* (Application No. 43870/04), Judgment, Strasbourg, 24 September 2013 and Pennino c. Italie (Requête no 43892/04) Arret, Strasbourg, 24 September 2013. See also the comments by Trentinaglia T. (2016), Gebietskörperschaften

273. During the monitoring visit, representatives of the Court of Audit pointed out that bankruptcy of local authorities can be declared. Pertinent decisions of the Constitutional Court, have characterised the budget of local authorities as a public good (which can have implications on enforcement procedures) and referred to the principle of intergenerational justice which is violated by over-debt. Debt levels and sustainability of debt are also supervised also through the controls of compliance with public accounting that the Court of Audit performs.

274. The constitutional amendment of 2001 introduced Article 119, paragraph 7, which provided that local authorities (and regions) "may resort to borrowing only as a means of financing investment expenditure; with the concomitant adoption of repayment plans and subject to the condition that budget balance is ensured for all authorities in each region, taken as a whole. State guarantees on loans contracted by such authorities shall not be admissible".[51] Since 2001, municipalities are also subject to the Internal Stability Pact, which is updated and approved annually. The Internal Stability Pact sets targets for their fiscal balances, limits on expenditure growth, as well as borrowing limits. Since 2003, a system of sanctions has been set up for non-complying municipalities, in the form of transfer cuts and freezes on hiring local staff.

275. Constitutional Act No. 1/2012 refers to the principle of balanced budgets in structural terms and bans the use of debt to finance the deficit. The law provided regions with leeway to compensate for temporary imbalances among the municipalities located in their territories. Moreover, each entity's ability to borrow is allowed within a maximum limit, identified to ensure the sustainability of loan repayment. Regarding local authorities, the limit is represented by the incidence of interest costs on the current revenues of local governments which cannot exceed 10%. In the case of regions, the limit is represented by the incidence of the annual repayment instalments for principal and interest and the total amount of tax revenues not meant to cover health financing, which may not exceed 20%.

276. Since 2019, Constitutional Court's Sentences No. 247/2017 and No. 101/2018 have simplified the rules of public finance, ruling that the regions, the Autonomous Provinces of Trento and Bolzano, metropolitan cities, and municipalities must contribute to the objective of net borrowing at the national level, in line with the Internal Stability Pact. Accordingly, from 2019, all SNGs must comply with the budget balance rules at the individual institution level (i.e. non-negative final and current account and non-negative final cash balance) and at the sector level. For ordinary regions, the rules were postponed to 2021 following the agreement of the Permanent Conference of October 2018.

277. In Italy, the outstanding debt of SNGs as a share of GDP (11.2%) and of public debt (6.1%) is below the OECD average (27.9% of GDP and 20.2% of public debt) as well as below the EU27 average (13.9% of GDP and 15.4% of public debt). The majority of SNGs' financial debt is in the form of bank loans issued largely to domestic financial institutions, in particular the Italian public bank Cassa Depositi e Prestiti (82% of the share capital is owned by the Italian Ministry of Economy and Finance - Deposit and Loan Fund). The share of intergovernmental loans has increased over the past years due to favourable interest rates and long maturities, while the use of bonds has declined from around 30% in 2006 to 6.5% of SNG debt in 2020.

278. On the part of the government, the improvement of the fiscal situation and borrowing rules has been appraised, while the representatives of AICCRE complained that various regulations have blocked the option of borrowing for local authorities for several years, even for local authorities with better administrational and fiscal abilities. Concerning regional authorities, the current situation is positive only for those regions that have adequate ratings.

279. Considering the above, the rapporteurs recognise that restrictions imposed on the borrowing discretion of local authorities are reasonable and align with EU policies. Pertinent measures for local authorities that face difficulties in the capital market could be adopted as far as they do towards have negative side effects on efforts towards fiscal consolidation. The conclusion is that Italy complies with Article 9, paragraph 8..

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im Haftungsverbund im Lichte der Rechtssprechung des EGMR, Europäische Grundrechte Zeitschrift (EuGRZ), Vol. 43 (10-12), pp. 253-263.

51. Constitutional Law of 18 October 2001, No. 3, in Official Gazette No. 248, of 24 October 2001, provided, by Article 5, paragraph 1, for the amendments to Article 117. It is remarkable, that the Constitutional Law of 20 April 2012, No. 1, in Official Gazette No. 95, of 23 April 2012, established, by Article 6, paragraph 1, that amendments to this article, relating to public finances, shall apply as of the financial year 2014.

3.9 Article 10 – Local authorities' right to associate

Article 10 – Local authorities' right to associate

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

3.9.1 Article 10.1

280. According to the Contemporary Commentary, local co-operation is another manifestation of local government because it is one of the many ways in which local authorities may choose to overcome their lack of resources or small size. The decision on whether to co-operate or not or to devise a distinct strategy is accordingly a reflection of the functional autonomy of local authorities. Local co-operation may take different forms: from "*de facto*" mutual assistance or simple bilateral agreements to the establishment of separate, joint administrative organisations. Although the Charter only mentions "*consortia*", the specific right to create joint institutional structures, separate from the participating local authorities, may take various forms: for instance, the establishment of private law foundations and companies or public law bodies such as agencies, consortia, unions of federations or pools.

281. Municipal cooperation is often seen as an alternative (and sometimes as a prelude) to mergers. In search of an optimal size for the exercise of local functions reform strategies have also focused on inter-municipal cooperation. Inter-municipal cooperation has been promoted with the implementation of Law No. 142/1990, in particular through the creation of municipal unions (unione dei comuni) and mountain communities, and with Law No. 56/2014, which strengthened municipal unions and set up financial incentives for municipalities. In Italy, the current legislation (TUEL) provides for three main ways through which municipalities can form cooperation structures: consortia (*consorzi*, Article 31 TUEL), conventions (*convenzioni*, Article 30 TUEL), and unions of municipalities (*unioni di comuni*, Article 32 TUEL). Regions, especially those with special status, have the power to regulate in more detail these co-operative instruments and entities.

282. Consortia are fully recognised as local entities, and they must have an assembly and a management board. Municipalities and other entities form a consortium in which they intend to manage one or more public services together (usually it is one service). As an institution, however consortia have lost their vitality and are in the process of being obsolete. They have not been officially repealed, but their use is limited. Conventions, on the other hand, are agreements between two or more municipalities for the delivery of services or the fulfilment of a task. Municipalities form a convention for at least three years, and the establishment of further bodies is not foreseen. Normally, one municipality must be identified as the co-ordinator of the parties in the convention.[52]

283. Unions of municipalities are composed of two or more municipalities for the associated exercise of their functions. These are recognised as local entities themselves with their own by-laws and organs and, unlike consortia, can perform an array of functions and services. Unions do not have their own revenue. They receive revenue from their municipalities' members, which is derived from taxes, tariffs and contributions that are due for the services conducted. Unions are the solution the legislator relies on the most since it offers greater stability and deeper integration among the involved municipalities, and it is generally perceived as the stage preceding a potential merger.[53] According to information provided by AICCRE, in November 2022, there were 559 unions in Italy. The region with the largest number of such bodies was Piedmont (116), followed by Lombardy (75) and Sicily (50). The two areas with the smallest number are Umbria (4) and the Autonomous Province of Trento (2). On average, unions in Italy comprise five municipalities.

52. Valdesalici, A., Trettel, M. (2023). The System of Local Government in Italy: A Stress-Test to Traditional Paradigms?. In: Nicolini, M., Valdesalici, A. (eds) *Local Governance in Multi-Layered Systems. Ius Gentium*: *Comparative Perspectives on Law and Justice,* vol 108. Springer, Cham.
53. ibid

284. Although in a first instance the option of exercising functions in an associated manner was designed as a voluntary choice for municipalities, the urgent need to cut down public expenditure has determined the use by the State of its competence over the co-ordination of public finance to impose a mandatory recourse to unions and conventions. Therefore, the system currently provides for two types of exercise of functions through inter-municipal co-operation: a voluntary one, for the exercise of functions freely identified by the municipalities, and a mandatory one, aimed at smaller Municipalities (those with less than 5 000 inhabitants) for the exercise of fundamental functions as established in Legislative Decree No. 78/2010[54] and subsequently reiterated in the sources[55] that regulated the matter.[56] In a relevant ruling, the Constitutional Court (No. 33/2019) has confirmed, in principle, the constitutional legitimacy of the mandatory exercise of fundamental functions in associated form for small municipalities.[57]

285. On the other hand, in the same ruling, the Constitutional Court recognised that the generalised provision in the law of an obligation for "associated management" of the fundamental functions of small municipalities is characterised by "excessive rigidity". The latter is the case when the law does not take into consideration those situations in which, due to the geographical location or the demographic and socio-environmental characteristics of the entity concerned, the instrument of obligatory association does not lead to the expected results, in terms of effectiveness and efficiency, in the provision of relevant services to the community.

286. The complaint that led to ruling No. 33/2019 of the Constitutional Court was filed by five municipalities and the "Association for the Subsidiarity and Modernization of Local Authorities" (ASMEL). This complaint was based on the consideration that the imposed obligation for associated exercise involved all fundamental functions of these municipalities, with a sole exception. This would result in a substantial extinction of the entities involved, which would be deprived of their "minimal core", on which there would be a constitutional reserve of operation. Legislative Decree No. 78/2010, by transferring all responsibilities to a different entity, would constitute, according to the referring judge (Lazio Regional Administrative Court), a situation similar to the extinction of the local authority through merger or incorporation, with consequent applicability of the Article 133, paragraph 2 of the constitution (territorial reforms) and the need to involve the populations concerned. The Constitutional Court, however, rejected this reconstruction for obligatory associations for the management of functions.

287. Nevertheless, the Constitutional Court affirmed the violation, in this case, by relevant provisions of the Campania regional law and of the Legislative Decree 78/2010 of Articles 3, 5, 97, 114 and 118 of the constitution in the parts in which they do not allow the administrations involved to demonstrate that, due to the particular conditions of the territories involved, it is not possible to achieve those economies of scale, which are the declared objective of the "associated managements". The relevant regional law was limited only to a generic reference to the territorial development systems contained in the regional territorial plan, therefore outlined for limited purposes. Furthermore, there was no mention of a concerted process within the CAL, or through other methods. However, in regional "ordering" decisions like the ones for the conferral of municipal functions, the participation of local authorities is essential, and the process for the allocation of functions must guarantee, as a preliminary matter, the establishment of synergistic relationships between the various institutional actors, to better respond to the needs of the community.

54. Article 14, paragraph 28, of Legislative Decree No. 78/2010, provides in this regard that "the fundamental functions of the municipalities, provided for by Article 21, paragraph 3, of the aforementioned law No. 42 of 2009, are obligatorily exercised in an associated form, through agreement or union, by municipalities with a population of up to 5,000 inhabitants, excluding single-municipal islands and the municipality of Campione d'Italia. These functions are mandatorily exercised in an associated form, through convention or union, by the municipalities belonging or already belonging to mountain communities, with a population established by regional law and in any case less than 3 000 inhabitants".
55. The fulfillment of the obligation to exercise the functions of small municipalities was structured as follows: by the beginning of January 2013, with reference to at least three of the fundamental functions, by 30 September 2014, in relation to a further three functions and, finally, by 31 December 2014, with regard to all the remaining fundamental functions provided for by paragraph 27 of Legislative Decree No. 78/2010.
56. The deadline for the extension of the obligation to all fundamental functions, set for 31 December 2014 has been postponed several times, most recently on 31 December 2019, based on the provisions of Article 11-bis, paragraph 1, of Legislative Decree No. 135 of 2018, converted into law No. 12 of 2019). This last decree, then, also provided for the establishment of a technical-political table, at the Conference of State-City Local Autonomies, in order to start on, among other things, a path to overcome the compulsory exercise of municipal functions.
57. ibid, with reference to Morelli, A. (2019) "Obbligatorietà delle forme associative dei Comuni e visione congiunturale delle autonomie locali", Le Regioni, pp. 523–532.

288. Relevant comments to the No. 33/2019 ruling have pointed out, that for the configuration of intermunicipal co-operation in Italy, it is necessary to consider the specificities of local authorities, pursuing the principle of differentiation. Since its legislative definition, contained in Article 4, co. 3, of Law No. 59 of 1997, this principle (now also introduced in Article 118, paragraph 1 of the constitution, alongside subsidiarity and proportionality) has required the legislator to take into account "the different demographic, territorial and structural characteristics of the entities", in other words, for what is relevant here, to focus on the factual reality, on the concrete situation in which the entity involved in the processes of mandatory exercise of associated management of functions will be operating. Therefore, allowing administrations the possibility of demonstrating, due to particular geographical, demographic and environmental conditions, the impossibility of achieving economies of scale and improvements in terms of effectiveness and efficiency, appears to be the first step towards mitigating an inflexible regulation within the system of local autonomies, which by definition requires, instead, elasticity and a spirit of adaptation towards territories with their own particular characteristics, which cannot be ignored.[58]

289. Ruling No. 33/2019 of the Constitutional Court has not implemented the Charter (even though Article 3 of the Charter was included in the "constitutional question" of the referring judge). From the viewpoint of the Charter, however, it is obvious that cases of obligatory intermunicipal co-operation (and especially those including several municipal functions) would require prior and efficient consultation with the local authorities concerned before final decisions are taken (Article 4, paragraph 6).

290. Concerning the reorganisation of functions and territories, the intertwining of competencies between the State and regions is particularly complex, leading to frequent disputes between the two levels of government. Although the role of the ordinary regions for the regulation of municipalities is generally limited, when it comes to mergers and intermunicipal associations, regions acquire a more central position in terms of legislative regulation, at least in theory. Hence, in the aftermath of the 2001 constitutional reform, the Constitutional Court did not doubt the inclusion of the competence over the regulation of the territorial reorganisation of local entities in the residual clause that grants exclusive legislative powers to the regions (Article 117, paragraph 4 of the Constitution).[59] However, the economic crisis that engulfed Italy from 2009 onwards strongly impacted the case law orientation, which almost nullified the role of the regions in this sector by extensively interpreting the concurrent competence on the coordination of public finance to the extent to which ample margins for legislative manoeuvre were recognised to the State.[60]

291. There is certainly a connection between these circumstances and the request of some Italian regions (starting with, Emilia-Romagna, Veneto and Lombardy) for the recognition of so-called "differentiated autonomy" as provided for in Article 116 , paragraph 3 of the constitution, which also includes legislative powers over the organisation and exercise of local administrative functions. The situation differs partially in the regions with special status, where the legislative competence over local government is exclusive; however, it should be noted that the more recent laws adopted in the special regions have in certain cases been a duplication of reforms enacted through State legislation in the ordinary regions.[61]

292. The attempt to transform provinces into IMC units in 2015 should not be left out in this comment to Article 10 paragraph1 of the Charter. In fact, provinces were abolished as self-governing units in 2015, and transformed into IMC bodies, which also became "metropolitan cities" in each of the 14 metropolitan areas designated by the law. Metropolitan cities and provincial IMCs are governed by mayors, presidents and council members. The central State appoints a prefect (*prefetto*) in each provincial IMC as a representative of deconcentrated administrative units. As already mentioned, in Recommendation 404 (2017) the Congress criticised the lack of direct elections in provinces and metropolitan cities and eventually, this reform was rejected by the 2016 referendum. Nevertheless, the provinces have made, in the meantime, some steps to support municipalities and according to the

58. See:Fusco, A. (2020), "Il Mito di Procruste. Il problema dell'interposizione delle norme generative di obblighi internazionali nei giudizi di legittimità costituzionaleser", *Rivista AIC*, No. 4/2020, 23 October 2020; Matarazzo, S. (2019), Corte costituzionale No. 33/2019 e gestione associata : verso il superamento dell' obbligatorietà per i piccoli comuni? *Il Piemonte delle Autonomie*, Anno VI, No. 2.
59. ibid, with reference to relevant rulings of the Constitutional Court Nos. 244/2005; 456/2005, 397/2006, 267/2011.
60. Among the others, see decisions nos. 151/2012, 120/2013, 22/2014, 44/2014, and 50/2015.
61. ibid.

representatives of the region Emilia-Romagna there are 2000 special agreements of cooperation, which is a good practice that should be sustained in the future.

293. As already mentioned in this report, a bill under discussion in the Senate and supported by all parties would re-introduce the direct election of presidents and provincial councillors and re-establish provinces and metropolitan cities as fully fledged local self-governments, constituting the second tier of local governance in Italy. The path of the law is still long, as the text will have to be approved by the Constitutional Affairs Committee of the Senate and then by the two parliamentary chambers, the Senate and the Chamber of Deputies.

294. During the meetings with associations of local authorities, the rapporteurs gained the impression that their representatives were relatively satisfied with the situation of intermunicipal co-operation in Italy. There were also some concerns expressed, for instance about a lack of vision in smaller municipalities for intermunicipal co-operation in some pressing subjects such as the green policies and climate change. On the other hand, other interlocutors (representatives of the region Emilia-Romagna) suggested that pooling resources should be introduced by law as a form of intermunicipal co-operation.

295. Taking into account the possibilities offered by the legal framework for intermunicipal co-operation and the relevant practice, the rapporteurs conclude that Italy complies with the first paragraph of Article 10. They would, nevertheless, point out that in cases of obligatory intermunicipal co-operation, prior consultation with directly affected municipalities is required (Article 4, paragraph 6 of the Charter).

3.9.2 Article 10.2

296. According to the Contemporary Commentary, the Charter is unusually categorical: this right “shall be recognised in each State” (Italy having ratified the Charter and not having made a reservation to Article 10, paragraph 2). This is the only passage in the Charter where this wording is used, which reinforces the directly enforceable nature of the paragraph. The recognition of such a right in a given State Party is usually achieved by including it in the general legal framework for local government. Although the Charter only speaks of the right to “belong” to or join an (already existing) association, it is clear that this should also be seen as recognising the inherent right to set up such associations. Otherwise, the very possibility of setting them up would be seriously hampered.

297. The aforementioned right is fully recognised in Italy, and the most important associations at the national level (there are also other associations at regional level) are the following:

- ANCI (Associazione Nazionale di Comune d’Italia). This is the largest and most important national association, founded in 1901. In January 2022 there were 7 134 municipalities belonging to ANCI, representing 94.7% of the population,This association also has “regional” chambers or sections;
- UPI (Unione delle Provincie Italiane): this is the association of Italian provinces, and it is currently a powerful and clear voice of the provinces in the changing political landscape. It represents all Italian provinces, except Trento and Bolzano;
- UNCEM is the association representing the mountain towns and communities;
- AICCRE is the “Associazione Italiana per il Consiglio dei Comuni e delle Regioni d’Europa”. It is the Italian section of the CCRE (Conseil des Communes et des Regions de l´Europe).

298. These associations are very active and play an important role in defending and promoting the interests of the local authorities they represent. Their active involvement in consultation procedures and their vibrant relationships with State authorities and decision makers have been confirmed by several interlocutors.

299. The rapporteurs conclude that Article 10, paragraph 2 is fully respected in Italy.

3.9.3 Article 10.3

300. As the Contemporary Commentary points out, although transfrontier co-operation is presented as a right of local authorities, this is not incompatible with two specific aspects. The first is that domestic local government legislation may establish steps, procedures or requirements concerning the exercise of such a right (such as the duty to report any planned cooperation with foreign local bodies). These requirements may be considered legitimate unless they seriously hamper the possibility of fruitful

transfrontier cooperation. The second aspect is that this local activity may overlap or conflict with the conduct of foreign affairs, which is a central government responsibility. In this case, the exercise of State powers and responsibilities should not mean arbitrary restriction of this right of local authorities, and in any case dialogue and negotiation mechanisms should be established to resolve any possible disputes.[62]

301. As noted in the introduction to this report, Italy has signed and ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities. On the other hand, Italy has signed, but not yet ratified the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, of 9 November 1995, ETS No.159. And, finally, Italy has not yet signed Protocols No. 2 (1988) and No. 3 (2009) to the European Outline Convention on Trans-frontier Co-operation. The delegation did not hear any official position from Italy as to the ratification of the said Protocols. For this reason, concerning the relevant international treaties, the situation remains the same as it was found by the previous monitoring report in 2017.

302. On the other hand, the rapporteurs did not hear any complaint about limitations or constraints imposed by the State on local authorities on engaging in transfrontier co-operation. This cooperation is especially fruitful in some territories near the land borders in the north, and in general Italian municipalities have established partnerships, agreements and twinning with towns and cities in other countries.

303. Representatives from the Emilia-Romagna Region emphasised to the rapporteurs that their region has always been an active participant in important co-operation processes within the national system and, therefore, with neighbouring Italian regions t. Emilia-Romagna has also been very active across the Italian border, especially within the European Union through the participation in numerous cross-border, transnational and interregional European territorial co-operation programmes and international contexts.

304. Therefore, the rapporteurs conclude that Article 10, paragraph 3 of the Charter is respected in Italy, and do not see any reason for Italy to delay ratifying the three above-mentioned additional protocols to the European Outline Convention on Trans-Frontier Co-operation between Territorial Communities or Authorities..

3.10 Article 11 – Legal protection of local self-government

Article 11 – Legal protection of local self-government
Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

305. According to the Contemporary Commentary to the Charter, “recourse to a judicial remedy” means access by a local authority to either a properly constituted court of law or an equivalent, independent, statutory body. If local autonomy is deprived of effective judicial safeguards, its substance and implementation will be largely left to the will or discretion of the political branches of government, that is the legislature and the executive.

306. The Contemporary Commentary points out, that a country that has ratified the Charter will normally have “transposed” or “incorporated” the Charter into national law, so by invoking those domestic laws and regulations, local authorities will be indirectly invoking the Charter itself. Regarding the types of law courts in which local authorities should be able to bring actions, Article 11 must first be invoked in constitutional litigation. In light of practical experience, legal recourse in constitutional courts is the remedy that best protects local self-government against any reduction in its scope brought about by parliamentary legislation, so this is the best mechanism for ensuring that there are “abstract checks” on the conformity of domestic laws with the Charter. In this connection, the Congress has noted during its monitoring exercises that local authorities in some countries have the right to lodge appeals with the constitutional court alleging that a certain piece of legislation disregards or violates the principle of local self-government, while in other countries this is not

62. See also Recommendation Rec(2005)2 of the Committee of Ministers to member states on good practices in and reducing obstacles to transfrontier and interterritorial cooperation between territorial communities or authorities (Adopted by the Committee of Ministers on 19 January 2005 at the 912th meeting of the Ministers' Deputies).

possible either because there is no constitutional court at all or because domestic law does not give local authorities locus standi.

307. In the previous monitoring report of the Congress (2017), it was recognised that Article 11 of the Charter was “generally respected in Italy”. Local authorities, as legal entities, have the right to go to ordinary or regular courts to defend their statutory rights, interests, assets, and properties. Local authorities can also go to the administrative courts, where they can defend their statutory rights and interests, as well as their autonomies if they have been ignored or reduced by a decision, plan, or policy of the central government or by regional agencies The associations of local authorities have standing, also, to sue in the administrative courts on behalf of the associated local entities.

308. In this field, the regional administrative courts and above all the Italian Council of State play a decisive role. According to Article 113 of the constitution, “judicial protection of rights and legitimate interests before bodies of ordinary or administrative jurisdiction is always permitted against acts of the public administration”. This form of protection is provided equally to citizens and public institutions themselves (including local ones) since the Constitution does not allow any form of “administrative reserve”.

309. According to the constitution (Article 134), the Constitutional Court rules () “on conflicts of attribution between the powers of the State and on those between the State and the Regions, and between the Regions”. Similarly, , both the State and the regions may appeal to the Constitutional Court against acts of a non-legislative nature that they assume are detrimental to their constitutionally guaranteed sphere in order to resolve the so-called conflict of attribution between the State and the regions or between regions. Also in the Italian legal system, as is typical of the most advanced federal or regional experiences, , specific forms of legal protection are provided at the Constitutional Court To guarantee the prerogatives of autonomy of each level of government.

310. This form of protection is expressly granted by the constitution to the state and the regions, which are reciprocally guaranteed the possibility of challenging the legitimacy of laws and enactments that they consider to be infringing their respective spheres of competence. The legal institution of the conflict of attributions therefore represents a fundamental instrument of legal protection for regions that is not available to local authorities (municipalities, provinces and metropolitan cities). According to information provided by the Council of State, litigation between the State and the regions is frequent to the point that it is necessary to take action to reduce it.

311. Local authorities are still excluded from these constitutional disputes; the ordinary law has granted them the possibility to ask the State or the region, through the so-called conference system, to challenge a law that infringes the powers of the local authorities themselves. This power is seldom used and is substantially weakened by the circumstance that requires, in the hypothesis that a local authority asks a region to challenge a law of the State, that the allegedly damaging law violates both the competencies of the local authorities and those of the region itself.

312. In the previous monitoring report (2017) it was pointed out that the lack of locus standi and direct access to the Constitutional Court deprives local authorities of the possibility to directly trigger constitutionality checks through the judicial remedies available to them. Even though local authorities (municipalities, provinces, metropolitan cities) are recognised by the Constitution (Article 114), next to the regions, as constituent parts of the Republic and autonomous entities, only the regions have locus standi and direct access to the Constitutional Court.

313. In addition, contrary to some old parliamentary democracies that do not have a constitutional court (e.g. Sweden and other Nordic countries where judicial review of constitutionality *in concreto* is performed by the courts), in Italy no court may pronounce the unconstitutionality of an act of parliament and disapply a given piece of legislation on the ground that it could be contrary to the constitution or a regular international treaty. If any court has doubts as to the constitutionality of a legal rule, it has to formulate a referral or preliminary ruling to the Constitutional Court. This means that such a referral is at the discretion of the court which can also reject relevant claims of local authorities as plaintiffs who asked for such a referral if the court does not find that such a referral is reasonable and justified. As already stated in the previous monitoring report of the Congress (2017), this feature hampers drastically the possibility of invoking the direct application of the Charter in a given administrative litigation, in which local authorities would be parties.

314. This possibility has become nearly non-existent since, the case law of the Constitutional Court denied the "interposition" of the Charter between the constitution and the ordinary legislation, characterising the Charter as a document of "guiding nature", while accepting for other international treaties (e.g. for the Kyoto Protocol of the UN) that their provisions are "interposed rules" (*norme interposte*) between the constitution and ordinary legislation(see above, 2.3).[63] Even though the constitution includes an exceptionally well-elaborated and extensive framework of rules and principles for local autonomies, the fact that the Charter is characterised as a "toothless" legal instrument by these rulings of the Constitutional Court has very negative effects on the legal protection of local self-governments in Italy.

315. This has already been demonstrated, for instance, in the case that led to the No. 50/2015 ruling of the Constitutional Court on provisions of the Delrio Law. The abolition of direct elections for bodies of the provinces has not been handled on the basis of Article 3 paragraph 2 of the Charter which explicitly and specifically requires the direct election of local authorities' councils by universal suffrage. In denying the character of "interposed rules" to the provisions of the Charter, the Constitutional Court avoided the implementation of this provision and proceeded to a constitutionally compliant interpretation, formulating the thought that indirect election of provincial bodies would be sufficient for the "effective representation" of local societies. This judicial deprivation of guarantees and normative safeguards offered by the Charter reduces the scope and the efficiency of legal protection that Italian local authorities can claim through judicial remedies.

316. In light of the above, it may be concluded that Article 11 of the Charter is partially respected in Italy since local authorities do have access to regular and administrative courts to defend their statutory rights, but they do not have direct access to the Constitutional Court which, in addition, does not recognise the character of the Charter as an international treaty whose provisions have the legal force of "interposed norms" as other international treaties do.

4. OTHER MATTERS RELATED TO THE FUNCTIONING OF LOCAL AND REGIONAL SELF-GOVERNMENT

6.1 The Italian regions

6.1.1. Status and Autonomies

317. The first regions that were created in Italy belong to the group of regions with special status: Alto Adige-Südtirol has been an autonomous territory since its annexation by Italy after the First World War; Sicily and Sardinia were recognised as "special regions" shortly after the end of the Second World War (Sicily's status was approved in 1946, even before the national constitution); and Valle d´Aosta was endowed with special status in 1948. Friuli Venezia Giulia became a special region in 1963. Each special region has a different system of powers—including a different system of local government—due to bilateral negotiations with the central level, which is guaranteed by a basic law that has the rank of constitutional law.

318. Among these five "special regions", Trentino-Alto Adige/Südtirol stands out and has an even more "special" status, because this "region" as such is in reality composed of two "autonomous provinces", Trento and Bolzano, which have their own competences, powers, and finances, the region being almost powerless in practical terms. In reality, these two provinces are often treated like "special regions" on their own; for instance, Article 117 paragraph 5 of the constitution provides that "the regions and the autonomous provinces of Trento and Bolzano shall participate in the preparatory decision-making process of EU legislative acts in the areas that fall within their responsibilities. They shall also be responsible for the implementation of international agreements and EU measures, subject to the procedural provisions set out in State legislation regulating the exercise of subsidiary powers by the State in the event of non-fulfilment by the regions and autonomous provinces".

319. Also, the European Court of Human Rights has treated these two autonomous provinces in the same way as regions.[64] In finding Article 3 of Protocol No. 1 on "free elections"[65] applicable in the

63. See Constitutional Court decisions No. 50/2016 and No. 33/2019.
64. *Repetto Visentini v. Italy* (dec.), 42081/10, 9 March 2021.
65. Article 3 of Protocol No. 1 – Right to free elections: "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the

case of these autonomous provinces, the Court noted that the legislative powers of the given region and its autonomous provinces were based on and clarified by the Italian Constitution and the Regional Statute, which granted them considerable discretion, to the extent that the provincial councils could be regarded as constituents parts of the "legislature" and having, therefore, *locus standi* at the Court.

320. The 15 regions with regular or "ordinary" status were created in the 1970s. Different reforms have been accomplished in the field of regional decentralisation. The most important one was accomplished through the constitutional reform of 2001, which increased the powers of the regions with ordinary status. Despite the presence of many typical federal elements, many other essential federal features are missing.[66] The European Court of Human Rights, however, has repeatedly treated Italian regions in a different way from local authorities, underlining that "given the powers afforded to regional councils by the constitution, they can be considered as part of the "legislature" within the meaning of Article 3 of Protocol No. 1.[67]

321. The special status of the Italian regions in comparison to the Italian local authorities (municipalities, provinces, metropolitan cities) is explicit in the constitution, even though both local authorities and regions are portrayed as constituent parts of the Republic and autonomous entities (Article 114), and even though the constitutional provisions dealing with regions are to be found in the same section that regulates local authorities: title V of the Constitution, which includes Articles 114 to 133. The underlying reason is that regions are conceived as territorial layers of the Republic, together with municipalities, provinces and metropolitan cities. Consequently, some constitutional provisions apply both to regions and local authorities, but there are also specific provisions for regions.

322. In addition, the constitutional regulation of regions is denser and wider than that of the local authorities, something that gives more stability and permanence to the regional autonomies. Thus, as in the case of local authorities, regions are depicted as "autonomous entities" having their own statutes, powers and functions. Although regions and local authorities are included in the same provisions, it is currently understood that local authorities are endowed with "administrative" autonomy, while regions have "political" autonomy: they can approve parliamentary legislation, and in some fields, they even have exclusive legislative competences. In principle, the State legislature cannot regulate on that matter.

323. The basic institutional structure of the regions is nevertheless regulated by the constitution itself. According to Article 121, the organs of the regions are the Regional Council (which exercises the legislative powers granted to the region), the regional cabinet, and its president. Beyond the constitutional provisions, each region has its own statute (*statuto*), that lays down its political-administrative organisation. The procedure for approval and amendment of the regional statutes is regulated by Article 123 of the Constitution, but here again, there are exceptions in the case of special regions, since their current statutes were approved by constitutional laws in 1948 (Valle d´Aosta, Trentino-Alto Adige/Südtirol, Sicily and Sardinia) and in 1963 (Friuli – Venezia Giulia). The main difference between special status and ordinary status is, in this respect, that latter is adopted and modified by an entrenched regional law, and the former is adopted by constitutional law, as well as any change there of.

324. The constitutional reform of 2001 was approved to considerably increase the powers and the political autonomy of the Italian regions. In championing the federalisation of the country, the relations between State and regions were reshaped. A federalist reform that was proposed in 2005, was however, rejected in the national referendum in 2006. Also, the general process of further regionalisation that was launched by the constitutional reform of 2001proved to be more difficult than expected, and the economic and financial crisis brought about a counter-wave of re-centralisation.

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choice of the legislature." See the relevant guide of the European Convention on Human Rights:, available at: j/https://www.echr.coe.int/documents/d/echr/Guide_Art_3_Protocol_1_ENG, accessed 7 February 2024.

66. According to the theoretical approaches to federalism, federations usually adhere to a common paradigm when it comes to local entities, local governments are creatures of the subnational units, whereas non-federal countries follow a different path, in which local entities depend on the central state. Against this background, Italy combines features that are hybrid and cannot be situated in either of these two groups. See Valdesalici, A. and Trettel, M. (2023).,"The System of Local Government in Italy: A Stress-Test to Traditional Paradigms?, in: Nicolini, M., and Valdesalici, A. (eds), *Local Governance in Multi-Layered Systems. Ius Gentium: Comparative Perspectives on Law and Justice*, pp. 261-282 (261).

67. *Miniscalo v. Italy*, no. 55093/13, 17 June 2021.

325. In some parts of the country, however, demands for more autonomy have been actively promoted by regional leaders. The Veneto Region for instance, presented several requests to the central government, aiming at the recognition of a deeper autonomy, according to Article 116, paragraph 3 of the constitution, a mechanism that has never been implemented in Italy. In particular, the region was not asking specifically for special status but aimed to secure more autonomy and powers on a large number of subjects. In the meantime, Plebiscito.eu, a minor Venetist organisation and supposedly cross-party committee, organised an unofficial online independence referendum. Following that episode, the Veneto Region tried to hold an official referendum by voting on a related bill. In June 2015, the Constitutional Court ruled out the independence referendum out as contrary to the Constitution, but it authorised one of the five autonomy referendums proposed by the region ("Do you want further forms and special conditions of autonomy to be attributed to the Region of Veneto?") To this end, the regional council had already approved in 2014 a piece of legislation (Act No.15 of 19 June 2014) approving the call for a referendum, where the public would be asked if it was in favour to opening a process of negotiation with the State to increase the current level of autonomy. In its ruling No. 118/2015, the Constitutional Court upheld the constitutional legitimacy of such an initiative.

326. The Venetian autonomy referendum of 2017 took place on 22 October in Veneto. The poll was not binding, but it could have had consequences in terms of negotiations between the Italian Government and Veneto as the regional government declared that it would ask for more devolved powers if “yes” won. As expected, the "yes" vote did succeed. Turnout was 57.2% and 98.1% of participants voted “yes”. In parallel, an autonomy referendum took place on the same day (22 October) in Lombardy, and the “yes” vote prevailed here too. Turnout was 38,2% and 96% of participants voted “yes”. Both the President of Lombardy Roberto Maroni and the President of Veneto Luca Zaia are members of Lega Nord (more specifically of Lega Lombarda and Liga Veneta, respectively). The Lega Nord is a strong proponent of federal reform, but in this case, the referendums were also supported by the Five Star Movement.

327. In March 2023, the government approved a Bill for the implementation of the differentiated autonomy of regions having ordinary status. This has been hailed by several sides as a particularly important step towards greater regional and local autonomies. As already mentioned in this report, Article 117 defines the exclusive legislative powers of the State, and the subjects of concurrent (State and/or regions) legislation. However, additional forms and conditions of autonomy in some areas can be defined in agreements between the State and the region in question; these agreements must be approved by both Chambers of the Italian Parliament with a majority of their members.

6.1.2 Resources of regions

328. In terms of human resources, the Italian regions have their own staff, which is independent of the State or local bureaucracy. The regions have a limited autonomy to determine the salaries of their employees since these are mostly determined by national collective agreements of the public sector, although they can establish complementary or accessory remunerations. They have the autonomy to hire and dismiss their own civil servants, as is the case in local authorities.

329. Italian regions have several own-source taxes. The most important is a regional tax on productive output (*imposta regionale sulle attività produttive* - IRAP). IRAP is a tax on economic activities, and it has had a basic rate 3.9% since 2015. The regions can increase or reduce the rate of IRAP and establish exemptions. Other regional taxes include a regional tax on vehicles, a regional tax on waste landfills and waste incineration plants, as well as a regional surtax on PIT (*addizionali regional all* - IRPEF), which varies from 0.7% to 3.33% depending on the region. As of 2022, a fiscal reform reduced the PIT, revised the rates of the regional and municipal surtax on PIT, and added exemptions to IRAP for some categories of employment (notably for self-employed persons). The central government partially compensates regions with €8 billion in transfers for their healthcare services, since IRAP represents the main source of financing for the health sector. A supplementary transfer of €76 million will further compensate regions that applied a higher IRAP rate. Despite the reform, tax revenue should continue to represent the bulk of regional revenue.

330. In Italy, there are two separate systems of grants, one for the regions (RSO) and one for the municipalities. The 2001 constitutional reform and the Fiscal Federalism Law of 2009 have set the principles for both systems. The 2009 law mandates that officials use both standard expenditure needs and fiscal capacity when calculating the allocation of equalisation transfers. This new

equalisation system is based on covering the costs of essential public services and equalising tax-raising capacities.

331. At the regional level, the equalisation fund guarantees the coverage of essential public services (healthcare, education, social assistance) in regions with low tax revenue. The Regional Health Fund is the most important component. It is allocated on a slightly modified per-capita basis, upon agreement reached among regions and the central government within the Permanent Conference. The central government increased this Fund from €114 billion in 2019 to €118 billion in 2020 and around €121.5 billionin 2021 to support regional finances during the pandemic.

Regions with ordinary statute

BALANCE BREAKDOWN (BY SOURCE OF REVENUE)	2017		2021	
	Total amount (euro)	Share of total (%)	Total amount (euro)	Share of total (%)
Title 1 – Tax and equalisation fund	109 623 941 709	65.9	114 879 745 007	65.1
Total Tax revenue (excl. health)	14 402 789 675	8.7	13 978 199 230	7.9
IRAP tax on productive output	3 705 453 112	2.2	3 061 068 362	1.7
PIT regional surcharge	2 141 536 590	1.3	2 630 324 154	1.5
Motor vehicle taxes	5 209 782 848	3.1	5 206 301 347	3.0
Tax revenue health	86 661 704 045	52.1	91 367 141 087	51.8
IRAP health	17 967 419 398	10.8	17 661 492 623	10.0
PIT health	8 063 657 996	4.8	8 532 025 572	4.8
VAT share health	59 492 500 835	35.7	64 687 297 609	36.7
Tax from special autonomy	68 452 643	0.0	78 454 000	0.0
Tax share	3 085 931 218	1.9	3 529 116 223	2.0
VAT share no health	546 089 185	0.3	414 695 540	0.2
Equalisation fund from the Central state	5 405 064 128	3.2	6 005 210 014	3.4
Title 2 – Current transfers	11 668 590 876	7.0	19 271 832 121	10.9
Title 3– Tariffs	4 090 260 985	2.5	4 507 591 044	2.6
Title 4– Capital revenue	7 677 979 820	4.6	7 249 814 474	4.1
Title 5– Financial assets reduction	1 385 742 859	0.8	9 760 772 897	5.5
Title 6– Loans	1 493 255 254	0.9	2 422 536 220	1.4
Title 7– Cash advance	1 543 859 430	0.9		0.0
Title 9– Clearing entry	28 938 397 446	17.4	18 258 403 223	10.4
Total revenues	166 422 028 377	100	176 350 694 987	100

Source: Ministry of Economy and Finance elaboration from Ministry of Economy and Finance/Italian National Institute of Statistics (Istat) data. Total amount and share can vary due to rounding.

332. According to the most recent information available to the Ministry of Economy and Finance , also based on the data published by the Italian National Institute of Statistics, the public finances of ordinary regions (15 out of 20 regions) display the following trends between 2017 and 2021: the total amount of revenues has increased (about 6%); the revenue structure (share of total) has remained relatively stable; and, the equalisation fund from the central State represents slightly more than 3% of total revenues.

333. According to interlocutors from the Ministry of Economy and Finance, the financial situation of ordinaryregions, compared to special regions, has progressively improved since 2017. This is confirmed by the available data on regional public finances. Moreover, the commitment of the Italian

Government, contained in the NRRP and the recent fiscal reform, regarding the full implementation of the regulatory and financial framework of the fiscal federalism of ordinary regions works in the direction of improving the financial architecture of such regions.

334. During the monitoring mission, the rapporteurs met representatives of the Emilia-Romagna Region who pointed out that, because of the 2001 constitutional reform, the competencies of the Italian regions, both legislative and administrative, have increased further. Moreover, the rigidity of the constitution itself, which requires particularly burdensome procedures for amendments to the fundamental law, offers a strong guarantee for the stability of this decentralisation to the benefit of the regions. From a formal point of view, therefore, the regions undoubtedly enjoy wide-ranging autonomy to which a large sphere of administrative and legislative powers is attached. However, the peculiar technique used to identify these powers, through a rigid list of material spheres, has led over time to the emergence of certain significant uncertainties at the level of application, given the difficulty of concretely ascribing a given activity to one or another of these spheres, with the consequence that in many cases, the centralising option prevails, and the preference for State intervention. From another point of view, it is necessary to consider that the list of matters of regional competence is perfectly unitary, that is it is valid for all the ordinary regions, which are all required to deal with the same matters. In the face of such a formalistic approach, the material reality that regional administrators are obliged to deal with poses instead the question of differentiation and taking into account the different territorial peculiarities. From this perspective, the possibility of the so-called differentiated autonomy envisaged by Article 116, paragraph 3 of the constitution may constitute a turning point, if implemented in a manner that preserves the unity of the country.

335. According to the representatives of the Emilia-Romagna Region, another serious problem stems from the fact that crucial sectors of regional policies, such as healthcare, are suffering because of insufficient resources. Indeed, it should be emphasised that the consequent application of the constitutional and legislative provisions on fiscal federalism would lead to a more efficient allocation of resources and would promote a more rational use. In another respect, exceptional events, such as he Covid-19 pandemic, can have a very significant impact on regional budgets, with respect to which the ordinary instruments provided for by the legal system do not always prove to be effective and capable of timely (re-)action.

336. At present, the Emilia-Romagna Region, together with the State and the local authorities directly involved, is engaged in a reconstruction process following the calamitous flooding events that struck a large part of its territory at the beginning of May 2023. Reconstruction is to be understood as the set of activities necessary to compensate for the material and direct damage suffered by the population and to restore the damage caused to public property in the affected areas, as well as to support economic activities that were also seriously affected.

337. In contrast to the ordinary regions, special regions have special arrangements with the State on financial relations. The most significant part of their revenues is a predetermined share of State taxes (a certain percentage of VAT, a certain percentage of PIT, etc.). Since the transfers are for the most part automatic, they do not need to raise many regional taxes.

338. Each special region has its own particular history, starting with the reasons for its constitution and the times in which it was established. The case of Friuli-Venezia Giulia the last of the five regions to be constituted, is presented here as an example. Friuli-Venezia Giulia bases its financial foundation (co-ordinated with that of the State, following the principles of national solidarity) on revenue shares of a series of State tax revenues.

339. The revenue of Friuli-Venezia Giulia region consists of the income from its assets or from its taxes which it has the power to establish by regional law, according to the tax system of the State and municipalities.

The region is entitled to the following fixed shares of State tax revenues collected in its territory:

- 60% of the revenue from PIT;
- 45% of corporate income tax revenue;
- 60% of the revenue from VAT of the territorial scope;
- 90% of the revenue from the state tax on electricity, consumed in the region;
- 90% of the revenue from fees for hydroelectric concessions;

- 91.9% of the revenue from the tax share of the excise tax on tobacco monopoly products consumed in the region;
- 29.75 % of the revenue from the excise tax on gasoline and 30.34 % of the revenue from the excise tax on diesel fuel consumed in the region for automotive use.

340. In compliance with the rules of the EU on State aid, the region - regarding State taxes for which the State provides the possibility to do so - may change tax rates: in reduction, beyond the limits currently provided for and, in increase, within the maximum level of taxation established by State regulations. The region may also introduce exemptions from payment, tax deductions and deductions from the tax base. In matters within its jurisdiction, it may establish new local taxes and allow local governments to change rates, either downwards or upwards, beyond the prescribed limits.

Regions with special statute

BALANCE BREAKDOWN (BY SOURCE OF REVENUE)	2017		2021	
	Total amount (euro)	Share of total (%)	Total amount (euro)	Share of Total (%)
Title 1 – Tax and equalisation fund	34 801 119 982	71.9	36 471 651 338	65.6
Total tax revenue (excl. health)	3 180 192 226	6.6	2 363 299 055	4.2
IRAP	1 565 172 990	3.2	1 194 650 324	2.1
PIT regional surcharge	517 959 078	1.1	351 855 739	0.6
Motor vehicle taxes	568 438 159	1.2	428 812 518	0.8
Tax revenue health	1 954 638 242	4.0	2 290 148 926	4.1
IRAP health	1 177 662 436	2.4	1 620 529 049	2.9
PIT health	518 851 806	1.1	669 619 877	1.2
VAT share health	-	-	-	-
Tax from special autonomy	29 666 289 514	61.3	31 818 203 357	57.2
Tax share	-	-	-	-
VAT share of health	-	-	-	-
Equalisation fund from central State	-	-	-	-
Title 2 – Currenttransfers	5 183 460 166	10.7	6 902 078 720	12.4
Title 3 – Tariffs	1 569 008 341	3.2	1 592 723 323	2.9
Title 4 – Capital revenue	2 055 487 574	4.2	2 484 497 435	4.5
Title 5 – Financial assets reduction	837 156 296	1.7	1 865 737 742	3.4
Title 6 – Loans	191 657 839	0.4	1 793 116 232	3.2
Title 7 – Cash advance	-	-	-	-
Title 9 – Clearing entry	3 737 887 543	7.7	4 529 010 932	8.1
Total revenues	48 375 777 741	100	55 638 815 722	100

Note: Ministry of Economy and Finance elaboration from Ministry of Economy and Finance/Italian National Institute of Statistics (Istat) data. Total amount and share can vary due to rounding.

341. Some major differences between 2017 and 2021 are the following: the total amount of revenues has increased (around 15%); the revenue structure (share of total) has partially changed with a reduction in the importance of taxes and a higher revenue share due to current transfers (from 10.7% to 12.4%); and loans represent a growing source of regional revenues. As for the regions with special status, during the same period, the following dynamics are worth commenting on. The total amount of

revenues has increased. In the case of essential services, the *Fondo perequativo* should compensate for any imbalance between the tax revenues of the regions and allow them to provide services under their competence to uniform levels throughout the national territory; in the case of other expenditure items, it aims to compensate those local levels of government with a smaller fiscal capacity.

342. The Court of Audit, based on the regulations in force, carries out management checks on the regional administrations to verify compliance with the results envisaged by the principles and programatic laws. The Constitutional Court in important rulings (sentence 25 January 1995 No. 29; 20 July 1995 No. 335; 30 December 1997 No. 470) deemed the control of the Court of Audit compatible with the autonomy of the regions. For the Constitutional Court, the control system is not at odds with the constitutionally guaranteed regional autonomy but is harmonised with it to ensure that each sector of public administration responds to the model traced by Article 97 of the constitution (principle of the good performance of public offices). The amendments to Title V of the Constitution (Constitutional Law No. 3 of 18 October 2001) strengthened the role of the Court of Audit as guarantor of compliance with budgetary balances by the regions and broadened the areas of management control because of sound financial management objectives. Nevertheless, the Constitutional Court's ruling No. 39 of 2014, limited the powers of the regional audit sections *vis-à-vis* the regions, declaring, *inter alia*, the constitutional illegitimacy of Article 1, paragraph 7 of Decree-Law No. 174 of 2012, limited to the part in which it refers to the control of the regions' budget and final accounts.

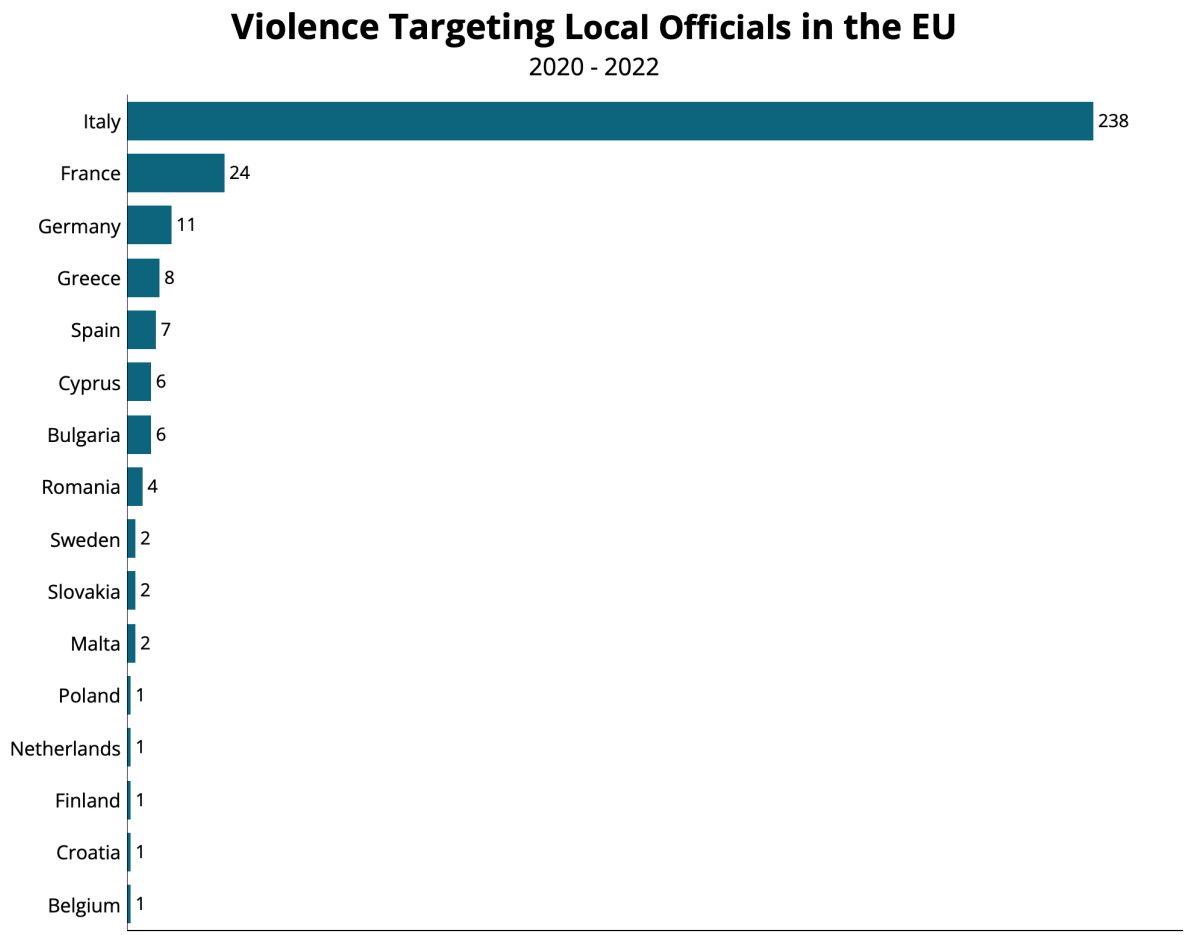
343. The Minister of Regional Affairs and Autonomies of Italy emphasised to the rapporteurs that a very important upcoming reform derives from the so-called "*autonomia differenziata*" (asymmetric autonomy) policy that will allow the regions to be more autonomous, through the allocation of functions (and related financial resources) in one or more among the 23 areas mentioned by the constitution and to sign pertinent agreements with the central State that have to be approved by both Chambers of the Parliament by absolute majority. Up to now, 11 out of 15 regions with ordinary status have applied for additional autonomies. As already mentioned, the determination of the essential levels of performance (LEPs) is fixing the service standards that every Italian citizen will be able to enjoy no matter which region tey are living, is presently being carried out by Professor Cassese's Committee.

6.2. Unidentified Violent Assailants Target Local Officials

344. A policy study commissioned by the European Parliament in July 2020 found that growing polarisation and social tensions within the EU contribute to the direct exposure of local officials to hatred and violence.[68] This study linked the murder of Pawel Adamowicz –Mayor of the Polish city of Gdansk – and Walter Luebcke – a Christian democratic politician and President of the German Region of Kassel, to hate speech. More recently, the French Mayor of Saint-Brevin-les-Pins resigned from his post lamenting a "lack of state support" after being exposed to far-right death threats and an arson attack over the opening of a government-backed refugee centre in his town. Taken together, these events across the EU suggest that local officials find themselves in the "firing line"; violence against them is used as an expression of opposition and growing disenchantment with national policies, or to secure private or organised interests locally.

345. ACLED ("Armed Conflict Location and Event Data") data between 2020 and 2022[69] shows that the perpetrators of this violence are overwhelmingly unidentified (85% of all recorded events targeting local officials in the EU). This anonymity among assailants across the board suggests a complicated patchwork of risks faced by local authorities in the region, where violence and online and verbal threats against them are a widespread phenomenon, although varying in intensity. Between 2020 and 2022, ACLED recorded events in 16 out of 27 EU countries (*see graph below*). However, 75% of all events reported were recorded in Italy, where local officials in the south of the country face the most risk.

68. Available at: https://acleddata.com/2023/06/22/special-issue-on-the-targeting-of-local-officials-eu/, accessed 7 February 2024.
69. ibid.



Source: ACLED data

346. The highest level of violence against local officials in the EU is recorded in Italy, with a total of 238 events – three-fourths of all similar events reported across the EU. Over the years, violence has remained relatively stable in this country, with 80 events recorded in 2020, 73 in 2021, and 85 in 2022. The targeting of local officials is a deep rooted phenomenon. Between 1975 and 2015, an estimated 132 administrators were killed at the hands of militant organisations, organised crime, and other actors in Italy. Yet, actions against local State representatives are not limited to physical violence. ACLED's partner Avviso Pubblico ("Public Alert"), an Italian non-profit organisation that brings together municipalities and regions fighting against organised crime, estimates that local officials faced over 400 acts of verbal and physical intimidation, threats and violence in both 2020 and 2021. Avviso Pubblico estimates for 2022 – not yet published at the time of writing – suggest that these trends have largely continued in 2022, despite a relative decline.[70]

347. The most common form of targeting of local officials recorded in Italy involves the destruction of public or private property, accounting for more than 90% of total events targeting local administrations. Property destruction is followed by physical assaults (12 events) perpetrated by violent mobs, often occurring at public events, and organised attacks (4 events) that remain unclaimed. In at least two cases, remotely activated explosive devices were used to target local municipalities. In February 2020, an improvised explosive device (IED) exploded in front of the accounting office of the Mayor of Soleto in Puglia, damaging the building's entrance. In October of the same year, an IED was detonated on the back of the town hall of Quartu Sant'Elena in Sardegna a few days before the municipal election. In two other events in 2021, bomb disposal experts intervened to defuse two IEDs. While violence, threats, and intimidation have been widely documented, for most of the violent incidents, the perpetrators are unknown. The only exception is represented by cases of violent crowds that physically assault members of their local administrations over personal grievances, often concerning their workplace or area of residency.

70. ibid.

348. Local officials in Italy's southern regions are the most exposed to violence, accounting for 75% of all events across the country between 2020 and 2022 (see map below). Puglia and Sicilia both recorded over 50 events, followed by Campania and Calabria at 40 and 37 events, respectively. These regions have also been the most damaged by criminal infiltration. According to data published by the Italian Ministry of the Interior, 14 town councils were dissolved for criminal infiltration in 2021, while a total of 52 municipalities were entrusted to an extraordinary commission in the same year. The goal of such commissions is to restore legality. They represent an extraordinary measure that is applied when there is a real danger that the activity of a municipality or another local government is bent on the interests of mafia-style organised criminal clans. Almost all municipalities where municipal bodies were dissolved for criminal infiltration in 2021 or which continued to be administered by an extraordinary commission from past years are located in the same Italian regions where the highest levels of violence occur, namely Puglia, Calabria, Sicilia, and Campania. The same trend was reflected in 2020.[71]

Source: ACLED

349. Local officials in southern Italy have long been a vulnerable target for organised criminal groups reaffirming their control over regions and municipalities and politicians seeking to eliminate their rivals. Among the most high-profile killings in Italy's recent history is the assassination of Francesco Fortugno, Vice-President of Calabria's Regional Assembly. Most actions, however, remain unclaimed, and investigations into the perpetrators and motives of violent acts against local officials are often inconclusive. Yet, the deep-rooted presence of organised criminal groups and their ability to influence politics in Italy's southern regions suggest the possible intimidatory nature of such violence. A more recent case was the arson attack against the car of a municipal councilor in the town of San Luca in Calabria in November 2022.

350. According to information provided by the Prefecture of Rome, there was a decreasing trend in the first 9 months of 2023 compared to the same period in 2022. Specifically, in the timeframe under

71. ibid.

consideration, a decrease of 9.6% is noted at the national level, as 416 incidents of intimidation were recorded, compared to 460 in the same period of 2022. Regarding the *modus operandi*, there is a 31.2% increase in intimidation perpetrated through social networks/the internet (from 77 to 101 cases) compared to the first 9 months of 2022, compared to a 28.7% decrease in "other modes" of execution, such as damage to public/private property (from 115 to 82 cases). Intimidation that occurred by sending missives to homes/offices recorded a 10% increase (from 70 to 77 cases). The rapporteurs will give a close follow-up to this situation to see if this decrese is confirmed in the coming years.

5. CONCLUSIONS

351. This is the fourth monitoring report of the European Charter of Local Self-Government on Italy, a country with very old and strong traditions of urban and regional autonomy and political cultures that have shaped, to a large extent, the common European legacy. In recent decades, Italy has developed a distinct model of regionalism and local autonomies that was further advanced in recent years through the constitutional reform of 2001. Local and regional democracy constitutes a complex and evolving keystone of the Italian political system.

352. As has also happened in other European countries, local and regional democracy in Italy has had to face trends towards re-centralisation and a suffocating lack of resources during a major period of economic crisis and austerity. The attempt to abolish the provinces as second-tier territorial self-governments was rejected by the Italian people in the 2016 referendum. In 2017, regional referendum once more put forward the claims for stronger regional autonomies. The Italian political system seem to be moving, once more, in a different direction with more positive policies for local and regional democracy.

353. Alongside the challenges faced by all European nations, such as climate change and the environmental crisis, demographic change, and the emergence of new, much more complex and diverse societies displaying a plurality of values and ways of living, Italy is also facing specific and unresolved challenges, such as extreme interregional disparities and organised crime (the latter to a lesser extent than previously).

354. The rapporteurs first examined the implementation of different points and suggestions made by the previous Recommendation 404 (2017). They concluded that some of the issues raised in the previous monitoring report persist, while others had been resolved, and positive developments were identified. On the other hand, some new issues have emerged that were not mentioned in the previous report. Concerning the main issues raised in Recommendation 404 (2017), the following issues have been resolved or improvements have taken place:

- the problem with the violation of Article 3 paragraph 2 still exists, since the governing bodies of provinces and metropolitan cities are not directly elected. However, relevant bills for the re-introduction of direct elections are going through the parliamentary procedures, with the full support of the governing coalition and the local and regional government associations. A certain level of relevant consensus seems to have been reached also with parts of the opposition. Therefore, the necessary legislative amendment may be approved by the Italian Parliament during the first months of 2024. Previous plans for the abolition of provinces have been abandoned;
- the revenue of local and regional authorities is growing again, even though the provinces are still less well off in comparison to other local authorities. The same applies to a certain extent for the ordinary regions in comparison to the special regions;
- consultation procedures have reached a level of operation that seems to satisfy the stakeholders from local and regional authorities, including consultation on financial matters that had suffered, during the period of austerity, from emergencies and other pressures;
- new recruitments and shifting perspectives on considerably better, increased human resources appear to have gradually changed the previous picture of a drastic lack of staff in local and regional governments;
- the process for the introduction of “differentiated” autonomy for ordinary regions provides guarantees for the achievement of the LEPs (Essential Levels of Performance) in all regions, including through the provision of equalisation measures that could reduce the gap in financial resources between ordinary and special regions;
- the equalisation system is in the process of improvement;
- the Additional Protocol to the Charter on the right to participate in the affairs of a local authority has been signed and ratified by Italy.

The rapporteurs would like to express their satisfaction with the targeted efforts of the Italian authorities to respond to several issues raised by Recommendation 404 (2017) and resolve them.

355. The following issues raised in Recommendation 404 (2017), have not been resolved or mproved:

- no system of fair and appropriate remuneration for the representatives of provinces and metropolitan cities for the discharge of their duties has been established. It seems that this issue will be resolved only when the bodies of these local authorities are directly elected;
- the possibility for provincial/metropolitan councils to formulate a vote of dismissal or no-confidence against their president/mayor to strengthen political accountability has not been introduced;
- the provinces, in particular, do not have resources that are adequate and commensurate with their responsibilities and must still contribute to the State budget.

During the consultation procedure, the Ministry of Regional Affairs and Autonomies indicated that the above-mentioned provincial reform text also expressly addresses these critical issues.

356. Relevant actions should address these shortcomings as well as the following issues that have emerged and were not explicitly mentioned in Recommendation 404 (2017):

- a systematic reform and modernisation of the current system of metropolitan governance for the metropolitan area of the capital city Rome should be initiated;
- following the re-introduction of directly elected bodies, the scope of action of metropolitan cities and provinces should be widened;
- the reduction of the number of councillors in small municipalities is counter-productive and should be cancelled;
- problems of overregulation and bureaucratisation that constrain the possibilities of municipalities to participate in projects (such as the NRRP) should be resolved;
- threats and violence against elected officials, especially in some southern regions of Italy should be stopped through the systematic actions of State authorities;
- the three additional protocols to the European Outline Convention on Trans-Frontier Co-operation between Territorial Communities or Authorities should be signed and ratified in the near future;
- the Italian authorities should undertake an initiative (probably through legal amendments) to resolve the problems arising from the fact that the case law of the Constitutional Court does not recognise the legal force of the Charter, thus depriving the local and regional authorities in Italy of the protection offered by the Charter.

APPENDIX – Programme of the Congress monitoring visit to Italy

PROGRAMME

MONITORING OF THE APPLICATION OF THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT IN ITALY

Rome, Anzio, Nettuno, Fontana Liri, Bologna, Forlì

9-12 October 2023

Congress delegation:

Rapporteurs:

Mr Andrew LEADBETTER
Rapporteur on local democracy
Chamber of Local Authorities, CRE/ECR[72]
Councillor, Exeter City Council (United Kingdom)

Ms Randi MONDORF
Rapporteur on regional democracy
Chamber of Regions, GILD/ILDG
Member of Denmark Legislative Assembly (Denmark)

Congress Secretariat:

Ms Stéphanie POIREL	Head of Statutory Activities Division of the Congress and Secretary of the Monitoring Committee

Expert:

Prof Nikolaos CHLEPAS	Member of the Group of Independent Experts on the European Charter of Local Self-Government of the Congress (Greece)

Interpreters:	Ms Paula BRUNO Ms Marta ERCOLANI

The working language of the meeting was Italian and interpretation from and into English was provided.

72. EPP/CCE: Group of the European People's Party in the Congress
SOC/G/PD: Socialists, Greens and Progressive Democrats Group
ILDG: Independent Liberal and Democratic Group
ECR: European Conservatives and Reformists Group
NR: Member not belonging to any political group in the Congress.

Monday 9 October 2023
Rome

JOINT MEETING WITH THE MEMBERS OF THE ITALIAN DELEGATION TO THE CONGRESS AND THE REPRESENTATIVES OF THE NATIONAL ASSOCIATIONS OF ITALIAN MUNICIPALITIES AND REGIONS:

Italian Delegation to the Congress[73]

Mr Fabio TRAVAGLINI, Head of the National Delegation to the Congress

Full members:

Ms Laura LAURO, Regional Councillor, Liguria Region
Ms Paola VERCELLOTTI, Municipal Councillor, Callabiana

Youth delegate

Mr Giulio BERNASCONI

National Association of Italian municipalities and regions:

Italian section of the Council of European Municipalities and Regions (AICCRE)
Ms Milena BERTANI, President of AICCRE
Mr Oreste CIASULLO, National Secretary of AICCRE

Union of Italian Provinces (UPI)
Mr Gaetano PALOMBELLI, Head of Institutional Affairs

Conference of the Regions and Autonomous Provinces of Italy (CINSEDO)
Mr Paolo CALVANO, Regional Minister (budget, human resources, heritage, institutional Reorganisation, Relations with the EU)

Conference of Presidents of Self-Governing Regional Assemblies and Provinces
Mr Paolo PIETRANGELO, Secretary General

National Association of Italian Municipalities (ANCI)
Ms Moira ROTONDO, European Policies, CDR Coordination, Relations with EU and Non-EU Associations, Territorial Co-operation Responsible

National Union of Mountain Municipalities Communities and Authorities (UNCEM)
Ms Paola VERCELLOTTI, Municipal Councillor, Callabiana
Ms Sonja SANTILLO, Secretary of the Presidency

CITY OF ROME

Mr Mariano ANGELUCCI, President of the Commission for International Relations, Fashion and Tourism of the Rome City Assembly

MINISTRY OF INTERIOR

Mr Claudio SGARAGLIA, Prefect, Head of the Department for Internal and Territorial Affairs
Ms Caterina AMATO, Prefect, Vice Head of the Department and Head of the Central Management for Local Authorities
Mr Angelo de PRISCO, Prefect, Deputy Head of the Department and Head of the Central Management for Electoral Services
Ms Teresa DE VITO, Prefect, Head of the Central Management for Demographic Services
Mr Antonio COLAIANNI, Head of the Central Management for Local Finance
Mr Antonio ORIOLO, Viceprefect, Director of the Department Head's office
Ms Caterina CIUFERRI, Interpreter

73. Delegation as of 26 June 2023

MINISTRY OF ECONOMY AND FINANCE

Dr Paolo DI CARO, Department of Finance, Director General Staff, Economic Advisor for Studies and Research
Mr Marco CAROTENUTO, Department of Finance, Directorate for Economic and Fiscal Studies and Research, Unit VIII, Head of Unit

Mr Danilo CARULLO, Department of Finance, Directorate for Economic and Fiscal Studies and Research, Unit VIII, Tax Economist
Ms Cinzia SIMEONE, State General Accounting Department - RGS, General Inspectorate for the Finance of Public Administrations, Director General Staff for Studies and Research

Tuesday 10 October 2023
Rome

DEPARTMENT FOR REGIONAL AFFAIRS AND AUTONOMIES

Mr Roberto CALDEROLI, Minister for Regional Affairs and Autonomies

Mr Claudio TUCCIARELLI, Minister Chief of Staff
Ms Paola D'AVENA, Chief of the Department for Regional Affairs and Autonomies
Ms Maria SCHININÀ, Chief of Minister's legislative office (or Ms. Carolina Annecchiarico, Deputy Chief of Minister's legislative office)
Mr Pierluigi TROMBETTA, Diplomatic Advisor to the Minister
Mr Giovanni VETRITTO, Department for Regional Affairs and Autonomies
Mr Filippo LA CAVA, Advisor to the Minister
Mr Francesco FORTE, Italian Ministry of Foreign Affairs
Mr Antonio TRAVASCIO, Department for Regional Affairs and Autonomies

THE SENATE OF THE REPUBLIC

Mr Alberto BALBONI, Senator, President of the 1st Commission on Constitutional Affairs

THE STATE COUNCIL

Mr Claudio CONTESSA, Chamber President

Mr Marcello APICELLA, Diplomatic Adviser to the President of the Council of State

COURT OF AUDIT

Mr Francesco PETRONIO, President of the Central Chamber for Local Authorities

Mr Giancarlo DI LECCE, Counsellor at the Audit Chamber for EU and International Affairs and Deputy Head of the International Affairs Office
Ms Stefania FUSARO, Counsellor at the Central Chamber for Local Authorities
Ms Elena TOMASSINI, Counsellor at the Central Chamber for Local Authorities
Mr Stefano GLINIANSKI, Counsellor at the Central Chamber for Local Authorities

Ms Giusi CASTRACANI, Administrative staff, Central Chamber for Local Authorities
Ms Valeria TAGLIAFERRI, Administrative staff, Central Chamber for Local Authorities
Mr Giuseppe BILOTTA, Administrative staff, Central Chamber for Local Authorities
Ms Daniela FRATTAROLI, Administrative staff, International Affairs Office
Ms Carla ROMAGNOLI, Administrative staff**,** International Affairs Office

Wednesday 11 October 2023
Anzio, Nettuno, Fontana Liri

PREFECTURE OF ROME

Mr Lamberto GIANNINI, Prefect of Rome

Dr Sara MASCOLO, Prefect, Director of the Prefecture of Rome for State and Permanent Conference
Mr Marco STUFANO, Deputy Vice-Prefect
Ms Antonella SCOLIAMIERO, Prefect, Representative of Anzio City
Mr Antonio REPPUCCI, Prefect, Representative of Nettuno City

MUNICIPALITY OF FONTANA LIRI

Mr Gianpio SARRACCO, Mayor of Fontana Liri

Ms Emanuele GIANNETTI, Councillor
Ms Eloisa IAFRATE, Councillor
Mr Sergio PROIA, President Advisory Council
Mr Fabio BIANCHI, Member Advisory Council

Thursday 12 October 2023
Bologna - Forlì

METROPOLITAN MAYOR OF THE METROPOLITAN CITY OF BOLOGNA

Ms Mery DI MARTINO, Councillor
Ms Maria Pia TREVISANI, Director
Ms Miriam PEPE, Director Finance Department

EMILIA-ROMAGNA REGION

Mr Paolo CALVANO, Regional Minister (budget, human resources, heritage, institutional reorganisation, relations with the EU)

Ms Lia MONTALTI, Regional Councillor, Emilia-Romagna Region
Ms Belinda GOTTARDI, Mayor Castel Maggiore
Mr Francesco FRIERI, General Director for Resources, Europe, Innovation and Institutions, Emilia-Romagna Region
Mr Andrea ORLANDO, Director of President's Cabinet
Ms Francesca PALAZZI, Head of Sector for Institutional Reform, Relations with the Conference of Regions and Coordination of Legislation

CITY OF FORLI

Ms Maria Pia BARONI, Deputy Mayor for General Affairs, Human Resources and Demographic Services, and Legality, Municipality of Forli
Mr Antonio GUARINI, Head of the Mayor's Cabinet, Municipality of Forli
Ms Serena NESTI, European Projects and International Relations' Office, Municipality of Forli
Ms Sonia SANTOLINI, European Projects and International Relations' Office, Municipality of Forlì
Ms Milena GARAVINI, Councillor from the Province of Forlì Cesena (Mayor of Forlimpopoli)
Ms Elena LOTTI, Representative from the Province's European project office