

# **SPAIN**

**Expert**

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## **I. GENERAL QUESTIONS**

### **1. How is the federation formally called (regional, federal state...)?**

From the perspective of the territorial organization, the federation does not have a formal name. "Informally", it is usually called "State of Autonomies".

### **2. Since when has the power been decentralized in your federation? Was the decentralization established since its origins or in a later time?**

The current political decentralization was established by the 1978 Spanish Constitution. The most recent precedent was the so-called "integral State", during the Second Spanish Republic (1931-1939). The republican experience of decentralization was quite relevant, both from a theoretical and a practical standpoint, in spite of being brief, partial and precarious. (It was only applied to Catalonia in 1932. Its operation was interrupted for several months in 1934. From 1936 to 1939, it was disrupted by the Civil War. In 1936, during the course of the war, a Statute of Autonomy was enacted in the Basque Country. In 1939, a Statute of Autonomy was also enacted in Galicia but was never enforced in practice.

### **3. Has decentralization been formally abandoned or practically inoperative in any historical phase?**

After the Second Republic, the political decentralization was legally abolished until the enactment of the 1978 Constitution.

### **4. Which are the deep reasons for the adoption of a politically decentralized system?**

The main reason for the creation of a politically decentralized system was the need to respond to a long lasting claim for self-government by three national communities: the Catalan, the Basque, and, perhaps to a lesser extent, the Galician. Later on, however, the decentralization was extended to the whole federal territory. Other reasons that could explain this, yet of secondary importance, were the goal to improve the efficacy of the management of public matters and democracy by allowing more issues to be decided on the closest level to the citizens.

### **5. Could you point out the main phases of the system and the main characteristics?**

In my opinion, since 1978, there have not been significant major changes concerning the evolution of the system of decentralization to clearly establish different phases. In any event, we could distinguish three phases. There was a first foundational phase, very brief in terms of comparative law, in which the federal Constitution and the Statutes of Autonomy or state "constitutions" were elaborated and enacted (1979-1983). Most of the transferences of powers took place during this time as did the creation of political and administrative state bodies. Spain was divided into 17 States and began to function as a country of autonomous states (1983-1985). The second phase was marked by several political agreements between the major federal political parties (1992). These agreements sought to equalize the differing level of powers exercised by the states. To this effect, several state constitutions were amended (1994). Beginning in 1999 and continuing through the present, the third phase has coincided with the second term of the People's Party government which this time holds congressional absolute majority. This phase has demonstrated a tendency to further centralization, while in some States proposals have arisen to amend their own constitutions to increase the level of self-government.

### **6. How many territories or main territorial communities compose the federation? Do they all have the same nature (for instance, states) or do they have different nature and position (for**

**example, states, federal capital, colonial lands, communities with a specific regime of autonomy)?**

The Federation is composed of 17 States -Autonomous Communities-. We should add two "Autonomous Cities" (Ceuta and Melilla), whose legal and political nature is different from the States. They lack legislative powers, they are granted less powers and their institutions of government are closer to the local ones than to the state ones. The whole federal territory is divided in territorial communities, taking into account both Autonomous Cities.

**7. Do they have singular features (for historical, linguistic, geographical, political, legal or economic reasons)? Do these singular features have political or legal consequences? In other words, how have the differences between the main territorial communities been approached from the perspective of uniformity/diversity or asymmetry/symmetry?**

The States have several differing features: historical (in some States the claim for self-government has a long lasting tradition and, in the past, they enjoyed some sort of political decentralization); linguistic (three States have their own language); geographical (two States are archipelagos and both Autonomous Cities are located in the African continent); political (in all States there are federal and state parties. Usually, the latter are minority parties. In some States, however, these state "nationalist" parties are very relevant, and they have governed for several decades in their respective States. In these States, then, the party system is different from the federal and the other state systems); and finally legal (historically, certain states had their own civil legislation or specific economic agreements with the Federation). Obviously, there are differences regarding the economic level of the States, but they do not amount to serious and irreversible territorial imbalances that may challenge the established system or its operation.

## **II. CONSTITUTIONAL LAW**

**1. Do you have a written Federal Constitution? What is the procedure for its elaboration, ratification and amendment? To what extent can states participate in the process of elaboration, ratification, or constitutional amendment? Which have been the most important amendments or the main constitutional phases until now?**

The federal Constitution was enacted in 1978. It was drafted by a democratically elected bicameral Parliament, following the classic procedure of working group, commission and plenary, and it was ratified by popular referendum. The Constitution lays down two procedures for its own amendment. According to the first one, whose requirements are less rigorous or burdensome, the amendment has to be approved by a qualified majority of both Congress and Senate (a majority of 3/5 is required in the first round in both legislative Assemblies; if this majority can not be reached, the amendment may be passed if an absolute majority of the Senate and 2/3 of Congress are in favor). Popular referendum is only held if there is a request by at least 1/10 of the members of any of the Assemblies. The second procedure, which is more burdensome, should be followed in the following cases: the total amendment of the Constitution or an amendment concerning the Preliminary Title (which embraces the basic structural and functional principles), the Chapter on fundamental rights or the Title regarding the Crown. In these cases, first, the amendment has to be passed by 2/3 of each House. Then, Congress and Senate shall dissolve. The amendment will have to be ratified by the new Congress and Senate, again by a majority of 2/3, and by referendum, which is compulsory instead of optional.

The amendment of the system of political decentralization, except for its fundamental principles, does not need to follow this stricter second procedure. The federal Government, Senate and Congress may initiate the process of amendment. State Parliaments may request the federal Government to adopt a proposal of amendment or send themselves a proposal to the federal Congress.

**2. Do you have any complementary constitutional federal rules? If so, which are the most important? Are "constitutional conventions", namely, unwritten binding agreements or rules of conduct, recognized in your system? Could you mention the most important?**

The Statutes of Autonomy complement the Constitution. In spite of being organic laws enacted by the Federation, they are the institutional or fundamental basic norm of the States or Autonomous Communities. The Constitution neither creates the Autonomous Communities, nor determines their powers, nor sets forth their internal organization. These quasi-constituent tasks are performed by the Statutes.

In my opinion, there are no truly binding constitutional conventions concerning the system of allocation of powers.

**3. Are there any written state constitutions? What is the procedure for their elaboration, ratification and amendment? To what extent can the federation intervene in these procedures? Could any federal organism provisionally suspend some of their provisions? Are state constitutions bound by federal rules other than the Federal Constitution? If so, which are they?**

Rigorously, there are no genuine state Constitutions, enacted by a original state power. Nevertheless, as I mentioned before, the Statutes of Autonomy perform a constitutional function, by complementing the federal Constitution. They are the basic fundamental norm of the States, since they establish their powers and the grounds of the state organization.

Concerning the elaboration and enactment of the Statutes or state "constitutions", and regardless the Autonomous Cities of Ceuta and Melilla, the federal Constitution distinguishes two major models, mainly on the basis of the differing degree of participation allowed to the States that will be created. According to the ordinary model, the future states (local bodies and federal representatives elected in the electoral district from the respective future states) may initiate the process of elaboration of the Statute, by means sending a draft Statute to the federal Parliament for its elaboration and enactment as any other "organic law". In contrast, according to the special model, the elaboration of the Statute is marked by the negotiation over the drafting process between *ad hoc* bodies from the future State and the Federation. Then, the Statute is enacted by referendum, and finally, by the federal Parliament. The States allowed to follow this second model were those that had historically voted a draft Statute of Autonomy (Catalonia, Basque Country and Galicia) or those where an absolute majority of the pre-autonomic bodies decided so (which was the case of Andalusia). The case of Navarra was similar to this last one, since its "Fueros" were negotiated between the state and the federal governments and enacted by the federal Parliament.

With regard to the amendment of the Statutes or state "constitutions", the federal Constitution provides that the same Statutes will regulate it. The only requirement is that the final amendment be enacted as an "organic law" by the federal Parliament, and, in certain cases, by referendum. From the perspective of the degree of state participation in the process of amendment of their Statutes we can distinguish two models, on the basis of the model of elaboration. When the States enacted their Statutes following the ordinary track, the state Government and Parliament may propose an amendment, and, according to some Statutes, also the federal Government and Parliament; the amendment always needs to be approved by the state Parliament (by qualified majorities) and then it shall be debated and enacted by the Federal Parliament (the absolute majority of Congress is required). When the States passed their Statutes following the special track, state and federal Governments and Parliaments may propose an amendment. Concerning the process, there are two kinds of amendments: those that affect the relations with the Federation and those that only entail a mere internal state reorganization and do not affect the Federation. In the first case, the amendment shall be passed by the state Parliament by 2/3 of its members, enacted as organic law by the federal Parliament and approved by popular referendum. In the second case, the amendment needs to be passed by both Parliaments, but the referendum is not required.

### **III. CONTENTS OF THE FEDERAL CONSTITUTION. DOES THE FEDERAL CONSTITUTION:**

1. expressly recognize federalism or political decentralization as a constitutional principle or value?

The Constitution does not proclaim federalism or political decentralization as a constitutional principle or value. It indirectly does, however, when after declaring in article 1 that national sovereignty lies in the Spanish people, article 2 recognizes and guarantees the right to self-governance of nationalities and regions and the solidarity among them, within the framework of the "indissoluble unity of the Spanish Nation". Article 137, not included in the Title concerning the constitutional values and principles, provides: "The State (that is, the Federation) is organized in municipalities, provinces and the Autonomous Communities (States) that might be created. All these institutions enjoy autonomy to manage their own interests".

2. **design a map of the territorial organization? In other words, does the Federal Constitution identify or enumerate the territories and/or the communities that conform the federation?**

The federal Constitution does not establish this kind of territorial map. The Constitution only establishes the conditions or requirements that need to be met in order to create the States. The so-called dispositive principle governs this matter.

3. **enshrine the autonomy of the states? If so, how?**

As I mentioned before, the federal Constitution recognizes and guarantees the right to self-government (article 2) and the autonomy to manage their own interests (art. 137). To make this effective, it implicitly invests them full legislative power, under the sole control of the Constitutional Court; a broad capacity of self-organization; and tax autonomy for the development of their own powers. These powers, however, are not set forth in the Constitution. Rather, it defers to the Statutes of Autonomy, which are free to decide the powers to be granted to the States, excluding those that the Constitution expressly reserves to the Federation.

4. **recognize states or main territorial communities the capacity to federate among them? If so, can they establish links or celebrate conventions among them without the participation of the federation?**

The Constitution expressly forbids the federation among States. They can establish conventions among themselves to render services, notifying the federal Parliament. In all other cases, cooperation agreements among States require the authorization of the federal Parliament.

5. **fully define the whole system of decentralization, or is this system thought to be developed to a great extent by future federal provisions? If so, which are they?**

The federal Constitution does not provide which States constitute the Federation, nor their powers. This task is left to the Statutes of Autonomy and, in a complementary and subsidiary way, to other organic laws.

6. **allow the exercise of the right to self-determination or the separation of states or other territories?**

Legally, this possibility is not recognized by the Constitution.

### **IV. INSTITUTIONAL ISSUES**

**1. Do states participate in the election, appointment or cessation of the federation's head? Is there any other relationship between this figure and the states or main territorial communities? Which one?**

States lack participation in these procedures. The Head of the State is the Crown. The holder of the Crown is not elected, but is determined by lineage. The king can not be held responsible. In the event of regency, disqualification from holding the Crown or extinction of all lines of succession, the federal Parliament has sole power to intervene.

**2. Is there any Senate or second legislative assembly that represents the states? If so, does it exercise its representative role effectively? Why? Which functions does the Constitution attribute to this legislative assembly? How are states represented in this chamber? Do they have the same kind of representation on the basis of the number of votes or seats? Does any state have a special position in this chamber (for instance, exclusive initiative or veto prerogatives, etc.)? How representatives are organized in this second chamber, according to their territorial origin or to their political groups?**

Formally, the Senate is the Assembly of territorial representation. However, the widespread agreement is that, in practice, it does not effectively represent the states for two main reasons. First, its members are almost exclusively elected through elections whose districts do not correspond with the territory of the States, but rather with the Provinces. Second, the Spanish Senate practically lacks any specific function as a territorial Assembly. The sole three specific powers regarding the system of territorial allocation of powers are: approving, prior to Congress, the distribution of resources from the compensation fund; authorizing conventions and agreements among the States; and authorizing Government, by absolute majority, to adopt exceptional measures to force the States to comply with their obligations. This last power is the only one that might have certain practical relevance. Until now, however, these measures, which are extremely exceptional, have never been applied.

States are not represented as such in the Senate. There are four senators from each province, elected by universal suffrage. Each state Parliament may appoint one senator, plus another one for each million people in its territory. This means that, among the approximately 260 senators, only 60 are directly appointed by state Parliaments. No State enjoys a privileged position in the Senate. The senators organize themselves on the basis of political forces. They can also form territorial groups, which, however, have less parliamentary capacity to act.

**3. Do states have legislative initiative over federal subject matters? Is their consent required for the enactment of certain federal acts? In other words, do they have a veto? If so, what kind of veto?**

The states enjoy "federal" legislative initiative, but they lack any veto right.

**4. Is there any neutral judicial court (Constitutional Court, Supreme Court, etc.) that protects the allocation of powers between the federation and the states? Do states participate in the process of designation of its members? How do you assess the influence of this court upon the current system of political decentralization? Broadly speaking, could you tell whether its case law has been most favorable to the interests of the federation or the states? Are there any subject matters or historical phases in which this phenomenon occurred? Can ordinary lower courts interfere in conflicts of powers between the federation and the states?**

There is a Constitutional Court. The States do not participate in the election of its members. Although four of them are elected by the Senate, as I mentioned before, this Assembly does not represent the States. Given the constitutional vagueness and ambiguity regarding the system of allocation of powers, the role of the Constitutional Court in the definition of this system has been extremely relevant. It has decided a great number of conflicts of powers, probably without comparison in other countries. Generally, it benefited the Federation, with significant exceptions that allowed to preserve the great

lines of the system. In any event, when evaluating the role of the Court and the trends of its case law, we should bear in mind that its role has been more "passive" than active", in the sense that, rather than imposing a unique interpretation of the Constitution, it has generally accepted the constitutionality of the interpretations given by the federal institutions of government, without rejecting other possible interpretations of the model. When the conflict concerns a legislative act, only the Constitutional Court has the power of constitutional judicial review. In the case of other legal acts, either ordinary courts or the Constitutional Court may review them.

- 5. Which legal mechanisms do the federation and the states have to protect their powers? Are they recognized only against legislative acts, or also against regulations and administrative decisions or omissions as well? Could you tell whether the safeguards and procedural position of the federation and the states are symmetrical? In other words, can the federation challenge state acts before a court? And vice-versa? Has the federation a veto against state legislative acts, regulations or decisions? And the states against the federation? Can a state bring a conflict of powers against another state before a court? In each state, which is the legitimate organism –legislative, executive, etc.- to bring judicial actions to protect state powers? Can local entities or municipalities bring judicial actions to protect their autonomy against federal or state acts or rules? Are there any other institutions or individuals legitimate to challenge federal or state legislative acts, regulations, rules or decisions on the basis of a conflict of powers?**

The control is essentially judicial. Only in the case of delegation of powers, can the federal Government review regulations and administrative acts. The scope of judicial review extends to legislative acts, regulations, acts and omissions. In general, the situation is symmetrical, except for the possibility, very relevant in practice, of temporarily suspend the enforcement of legislative acts, which is only applied automatically against state laws. The suspension, however, can be revoked by the Constitutional Court in five months if the legal requirements are met.

States are not granted standing to bring a conflict of powers against other States. Within each State, the state government and the Parliament, but not parliamentary minorities, can bring a conflict before the Constitutional Court against the Federation. Local institutions may bring a conflict before the Constitutional Court against federal and state laws. Besides the federal and state Governments and Parliaments and the local institutions, no other institutions have standing. With regard to legislative acts, the Ombudsman may bring an action of unconstitutionality, but it is doubtful that he could do it on the basis of mere issues of power. Indirectly, however, an action to protect individual rights could involve issues of power.

- 6. Who is in charge of the official appointment of the main state authorities (president of the state, government, parliament or legislative assembly, judicial power, etc.)? Does the federation intervene in the process of appointment?**

The Federation does not intervene in any of these appointments, except for the ones concerning the judicial power, which in Spain is unified. Only regarding the President of the State, does the King adopt the formal act of appointment, ratified by the President of the federal Government. However, these are ceremonial functions.

- 7. Does the judicial power follow the allocation of powers? In other words, are there federal and state courts with jurisdiction to solve federal and state cases respectively? Regarding state courts, is the appointment of judges, magistrates and administrative staff a state power? Do states enjoy legislative power to regulate these issues? Is there any body of self-government of the judicial power? If so, which is its composition? What functions does it have? Who is responsible for the provision of material resources to the administration of justice (federation or states)? Which are the criteria for the allocation of resources? Can federal courts review state court's decisions? In what circumstances?**

The judicial power is unified, that is, the judicial power is not decentralized. The Federation is in charge of the selection and appointment of judges, magistrates and auxiliary staff. The States only have the faculty to ask that selection tests be commenced. There is an institution for the self-governance of the judiciary, called the General Council of the Judicial Power ("Consejo General del Poder Judicial"). It is composed of the President of the Supreme Court and twenty other members, elected by judges and magistrates and by both legislative assemblies of the federal Parliament. Its main competence concerns judges' selection, training, posts, promotions, administrative situations and disciplinary regime. It is also in charge of the courts' inspection. It enjoys a limited regulatory power and it is informed of certain legislative drafts regarding the judiciary as well as criminal or penitentiary laws.

**8. Are there others mechanisms for state participation in federal institutions or functions? Do states participate or are represented in relatively autonomous federal organisms, regarding, for instance, citizen's rights or intervention in the economy (independent agencies with regulative, financial and arbitration powers, etc.)?**

There are no such significant institutions.

**9. Can states freely hold a referendum regarding political or legal measures? Are there any constraints? In other words, does the federation have any power over this field?**

The States can not hold a popular referendum without the authorization of the federal Government.

**10. Is there any pro-state provision concerning symbolic issues (flags, protocol, languages, etc.)?**

The Constitution establishes the Spanish language as the official language of the Federation and provides that all citizens have the duty of knowing it and the right to use it. At the same time, the Constitution recognizes that other languages (Catalan, Basque and Galician) are official in their respective States, according to their own Statutes of Autonomy. Similarly, the Constitution also establishes that state flags and symbols will be used, in conjunction with the federal flag, in state public buildings and official acts.

## **V. THE ALLOCATION OF POWERS**

**1. Is the system of allocation of powers mainly enshrined in the Federal Constitution? Is it secured by the Federal Constitution?**

The system of allocation of powers is not fully established in the text of the Constitution. The Constitution, however, establishes certain safeguards regarding its essential features and regarding the state constitutions that complement the provisions of the federal Constitution.

**2. Which is the basic design of the system (a list of federal powers, a list of state powers, a double list, other solutions)?**

The Constitution lays down a list of federal powers. It also includes a list of powers that the States created following the ordinary track might include in their Statutes. Five years after the enactment of their Statutes, those States could assume any power not expressly granted to the Federation. States created following the special track did not need to wait five years to be able to assume such powers not expressly reserved for the Federation. All powers not expressly assumed by the States correspond to the Federation.

**3. Is there any constitutional provision concerning residual powers, namely, "new" subject matters, not allocated either to the federation or to the states by constitutional law? If so, where are allocated the residual powers (federal or state level)? Is it actually effective? Are**



**there any rules or principles that presume that the power is vested in a certain level of governance?**

The residual clause in favor of the Federation includes also "new" issues. Until now, the residual clause has rarely been enforced, neither concerning subject-matters that were "forgotten" when the Constitution and the Statutes were enacted and so not included in any text, nor concerning "new" subject-matters. The scope of the subject-matters expressly mentioned in the text of the Constitution and the Statutes has tended to be interpreted broadly, to cover all public acts in controversy.

**4. Is there any rule that gives preference to federal law in case of conflict with state law? If so, has it been actually applied?**

The Constitution includes a clause whose interpretation is very controversial. It provides that federal legislation prevails over state legislation in all those fields which are not granted to the exclusive power of the States. The question, then, is what "exclusively granted to the States" means. This is also very controversial. Probably for this reason, this clause has hardly been enforced.

**5. Are there other general rules? Which are they?**

The Constitution establishes that federal legislation is supplementary vis-à-vis state legislation. After long doctrinal debates, the Constitutional Court held that this clause did not allow the Federation to legislate within fields where it lacked powers. Rather, the supplementary principle delineates the extent to which federal rules, enacted by the Federation in the exercise of its own powers, might be applied to analogous state fields.

**6. Does the Constitution allow to make the allocation of powers more flexible by mechanisms other than constitutional amendment? In other words, can the federation, by itself, transfer or delegate powers to states? Through which mechanisms? What role did all those mechanisms play on the evolution of the federation? How have the decisions regarding the material, economic and human resources to be transferred as a consequence of a transfer or delegation of powers been taken?**

The Federation may delegate or transfer powers to the States. In these cases, the Federation may establish principles, bases or guidelines that States must respect and methods of control regarding the exercise of these powers. The legislative act of transference or delegation should provide the financial means needed to exercise that power. This mechanism has been employed in several occasions. However, it has not affected the evolution of the system of allocation of powers so as to indirectly redefine the system established by the Constitution and the Statutes of Autonomy.

**7. Has any subject matter been fully attributed to just one of the territorial levels of governance –federal or state-?**

Yes. Regarding several subject matters, all functions have been granted to the Federation or the States.

**8. Is the technique of "shared" powers recognized (both federation and states have legislative powers, although federal law takes precedence over state law in case of conflict)?**

In principle, this technique, except for the case of culture, is not recognized by the Constitution or the Statutes. However, in practice, regarding certain subject matters such as environment or gambling, there is some sort of concurrence.

**9. Are there any subject matters in which the legislative power is exclusively attributed to the federation, while the executive power is attributed to the states? If so, is the power to enact regulations regarded as legislative or executive power? Can federal legislation determine state administrative organization and practice?**

It is usual for the legislative and executive powers being respectively divided between the Federation and the States. The power to enact regulations *ad extra*, not concerning mere self-organization, is regarded as legislative. Only when it is necessary to secure the basic, may federal legislation determine administrative organization and practice.

**10. Are there any subject matters in which the federation can establish principles or basis for the state legislation? If so, has the federation made an extensive use of this power? Is there any mechanism to correct that situation?**

Regarding a relevant number of subject-matters, the Constitution grants the Federation the power to establish the principles, bases or guidelines for the state legislation. The Federation has made an extensive use of this power, concerning both the scope of the subject-matters over which this kind of power is recognized and, especially, the level of detail of the basics or the principles, even including mere executive acts regarded as necessary to secure the basics. The Constitutional Court tends to uphold the enactment of very detailed basic rules. The criterion bases-development has proved to be barely useful and secure as a judicial canon to solve the conflicts of powers between the Federation and the States.

**11. Does the federation have an own administrative organization on the state territory? How strong is that administration? In which fields does it act? Can the state administration exercise any federal power delegated by the federation? If so, are state administrative bodies hierarchically dependent of the federal administration? What mechanisms of review are reserved to the federation to secure that states correctly enforce federal law?**

The Federation has its own Administration within the territory of the States. The federal Administration is still very relevant regarding fields such as defense, police or the judiciary. The States can develop federal powers by means of prior delegation or transference from the Federation, according to the mechanisms and requirements laid down by the federal Constitution (see V.6)

Besides such typical mechanisms to make the formal allocation of powers more flexible, the delegation of powers from the federal Administration to state Administrations is not admitted. This kind of delegation, however, is expressly recognized between the Federation and local entities and between States and local entities. Apart from that, administrative legislation provides a mechanism called "encargo de gestión". This mechanism allows Administrations to entrust "other entities of the same or a different Administration, for efficacy reasons or lack of appropriate means" with the "the development of material or technical activities or services" of which they are in charge. Generally, it is agreed that this mechanism, in spite of being theoretically limited, has allowed "covert delegations of powers". Although strictly there is no hierarchy between the Administration that receives the mandate and the one that gives it, certain dependence between them develops. The latter can revoke such mandate according to the terms laid down in the convention.

Finally, in certain occasions, state Administrations have exercised federal powers through atypical mechanisms that make the allocation of powers more flexible, such as the grant of powers through ordinary law, in the case of harbors of general interest, or mechanisms of collaboration, such as consortiums or conventions.

**12. What are the general limits of state powers?**

The Constitution sets forth a group of principles that all public authorities must respect. These principles are, for instance, the principle of solidarity among all the parts of the territory; the inexistence of economic or social privileges; and the prohibition of adopting measures that directly or indirectly undermine the free movement and establishment of persons and the free movement of goods within the Spanish territory or undermine the principle which says that all citizens have the same rights and obligations in any part of the federal territory. These principles, however, should be

interpreted systematically, so that the capacity of self-government of the States is not completely obliterated.

**13. In your opinion, what are the most important federal powers?**

Foreign affairs, defense, justice, corporate, criminal, penitentiary and labor legislation, customs, foreign commerce, monetary system, bases of credit and banking, bases of health, bases of social security, bases of public Administration's regime, bases of environment, bases of press, radio and television regime, bases of education.

**14. In your opinion, what are the most important state powers?**

Organization of the institutions of self-government; legislative development of education, health, environment and local regime; culture, tourism, internal commerce, industry, agriculture, ranching; civil legislation in the States that historically had their own; and police in certain States.

**15. Has any of these federal or state powers been extensively interpreted?**

All the economic powers (bases and coordination of the general planning of the economy, bases of credit regulation, banking and insurances, foreign commerce and State Treasury).

**16. Does the Constitution provide the transfer of sovereign powers to regional or international organizations? Does it address this issue in the domestic legal system, taking into account the decentralized structure of the federation? Does it give the states the right to ratify international treaties or agreements? If so, in which conditions? How is the international responsibility of the federation addressed?**

The Constitution grants the Federation exclusive powers to transfer sovereign powers, regardless of the decentralized structure of the country. States lack powers to sign international agreements or treaties. Only the Federation is responsible at the international level. Some Statutes of Autonomy provide that the States will be informed of the elaboration of treaties that concern their powers.

## **VI. LOCAL AND MUNICIPAL GOVERNMENT**

**1. Does the Federal Constitution recognize local or municipal autonomy? And the state Constitutions? If so, which term is it used regarding this autonomy? What substantially follows from this constitutional recognition?**

The federal Constitution proclaims the principle of autonomy of municipalities and provinces. It only establishes, however, that their governments and administrations will be autonomous and democratically elected by the people, direct or indirectly. Usually, state constitutions do not go beyond the mere reiteration of the principle of local autonomy. So, these texts do not lay down the powers of local institutions nor their guarantees. These issues are regulated by federal basic laws and state laws of development.

**2. Are the local representatives democratically elected by the people of the municipality or local entity? If not, which is the method for their election?**

The members of municipal institutions of government are directly and democratically elected by the people (majors are indirectly elected by and among the elected members of the collective institutions of government). The members of others local institutions are democratically elected, indirectly, by and among the members of the municipal institutions.

**3. Are local entities under federal or state control? If so, are these controls limited to issues of legality or do they also cover issues of opportunity? Can municipalities or other local entities**

**challenge federal or state law or other decisions, on the grounds that they violate their autonomy? Before which bodies or courts?**

Local institutions are subject to both state and federal control. This control, however, is merely legal, rather than political. Local institutions can challenge federal and state laws and acts either before ordinary courts or before the Constitutional Court.

**4. Is the design of the local government (kind of local entities, organization, powers, human resources, etc.) under federal or state power? What local subject matters or functions are allocated to the federation and the states? Can the federation establish direct bilateral relationships with municipalities or other local entities? Can the federation intervene upon their activities by exercising federal powers concerning a particular sector or through its spending power?**

The definition of the local regime concerns both the Federation and the States. The Federation establishes the bases and the States are responsible for their legislative development. In practice, however, the bases cover a wide range of issues and they are very detailed. The Federation may establish, and it actually does, direct bilateral relations with these local entities. The Federation affects their activities by means of its federal powers and its spending power.

**5. Are there "city-states" in your system? According to which provision? Is their regime equivalent to the states' one? Apart from these city-states, are there any municipalities with a particular autonomous regime? Which ones? Which is the basis for the recognition of this regime?**

There are two City-States, Ceuta and Melilla, in North Africa. Although their potential existence was recognized by the federal Constitution, they were actually created through the enactment of their respective state Constitutions by the federal Parliament. In spite of having a "Constitution" or "Statute of Autonomy", like the other States, the legal and political nature of these Cities is different from the States. As I mentioned before, they lack legislative powers, they enjoy less powers and their institutions of government are closer to the ones of local entities than to the state ones. Besides Ceuta and Melilla, the two biggest cities in Spain, which are Madrid and Barcelona, enjoy a particular regime enacted by means of special Municipal Charters. Rigorously, however, from the standpoint of their autonomy, this regime is not substantially so different from the regime of other municipalities.

**6. Can states create "intermediate" local entities between municipalities and states? Are there any intermediate local entities in your system? Do they exist only in some states or in the whole territory of the federation? Are states free to establish their territorial limits? What powers do they have? To what extent are they dependent on the states? What is the system for the election or appointment of the chiefs of their governmental bodies? Can the federation intervene in the organization, powers or financing of these intermediate local entities? How? For which purposes?**

States can create, and they have actually done so, intermediate local entities. They are fairly widespread, although not in all the States. The States can determine and modify the territory of these entities. They are vested supra-municipal powers, regarding subject-matters such as the regulation of the territory and urbanism, health, social services, culture, sports and education; powers of coordination and cooperation with the municipalities located in their territorial area; and delegated powers from the state administration. These entities enjoy legal personality and full capacity. They are autonomous vis-à-vis the States to seek their own interests. Their members are elected by and among the members of the municipal institutions. The Federation may intervene to establish the bases that all public administrations must respect to secure a minimal uniformity, and above all, a basic uniform treatment for all citizens before the several public administrations.

- 7. How are local powers determined? Can local governments provide services or perform federal or state powers? If so, which legal mechanisms coordinate their collaboration (delegation, assignment, etc.)? In which subject matters can this form of collaboration exist? Are local governments obliged to cooperate? Do they have a right to receive financial funds from the federation or the state that asks for the collaboration?**

Local powers are defined by federal basic laws and, actually in a residual way, by state laws of development. The system of allocation of powers is grounded upon a general clause. Apart from an eventual list of concrete powers, municipalities are vested all those functions aimed at satisfying the needs of the municipal community. Both the Federation and the States may delegate the exercise of powers to the municipalities by means of delegation of powers or assignation of competences for the management of services. Except for some concrete cases legally established, the consent of the local institutions and the provision of the corresponding financial resources, particularly when the delegation is compulsory, are required.

- 8. Do local governments have normative or regulatory power? Which other general powers do they have? What powers are lacking?**

Local entities enjoy powers to enact regulations. Besides the power of making regulations, within the scope of their functions and according to the terms established by the federal and state legislation, they enjoy the following powers: self-organization, taxation, expropriation, levy of execution, disciplinary power and power to review their acts on their own motion.

## **VII. INTERGOVERNMENTAL RELATIONS**

- 9. Does a principle of collaboration or constitutional loyalty among the different political and administrative authorities exist in your federation? If so, where is recognized (constitutional law, convention)? Which is its content and what consequences follow from this principle? To what extent is there a hierarchy among the different administrations?**

The federal Constitution solely announces the principle of coordination as a principle that should govern the activity of the federal Administration and recognizes the capacity of the States to reach cooperation agreements. It does not include a principle of constitutional or federal loyalty. The Constitutional Court, however, in several decisions, held that in spite of the silence of the text of the Constitution, the principles of collaboration and loyalty were inherent to the autonomic system. Federal laws provide for intergovernmental mechanisms, particularly Act 30/1992, on the legal regime of public administrations, modified by Act 4/1999. There is no hierarchical relationship between public administrations.

- 10. Does the Federal Constitution establish a system of intergovernmental relations between the federation and the states? If so, through which mechanisms? Are these mechanisms established in other constitutional or legislative provisions? To what extent are institutional practices or conventions important on this matter? Generally, which is the importance of intergovernmental relations for the dynamics of the system? To what extent do they allow more flexibility in the formal allocation of powers?**

As I mentioned, intergovernmental relationships are essentially regulated by federal laws. They set forth mechanisms of mere help and assistance so that the proper administrations can perform their own functions, as well as mechanisms that allow the joint exercise of concurrent powers or powers that require collaboration (sectorial conferences, collaboration conventions, joint planning and programs, etc.) The practical importance of such mechanisms of collaboration has increased over time. Until the nineties, they were hardly employed. At present, the number of sectorial conferences and conventions is already very significant, although it does not amount to a substantive transformation of the formal allocation of powers.

**11. Are there organisms to coordinate the horizontal collaboration among states? Does the federation participate in these organisms? Is an authorization required for their creation? How the states are represented? Are they important for the system?**

There are no significant institutions for the relationship among States.

**12. Which role do local governments play in the system of intergovernmental relations? In which organisms of collaboration do they participate?**

Constitutional law does not establish any organism where the Federation, States and local entities may meet. Ordinary legislation provides for the participation of local entities in several organisms created to facilitate the advisory participation of local entities in the exercise of federal or state powers, to promote the collaboration between different levels of government or to secure the coordination of local activities by territorially superior administrations.

Generally speaking, such organisms have a bilateral nature. In other words, they provide for the participation of the Federation and local entities, on the one hand, or the States and the local entities located in their territories, on the other. In this sense, we should emphasize the National Commission of Local Administration, which is a permanent organism for the collaboration between the federal and the local administration. The same sort of organisms exist at the state level. For instance, in Catalonia, the Commission of Local Cooperation. There are, however, some exceptions. Local entities might be invited to participate in the so-called "sectorial conferences". These are multilateral organisms of cooperation within certain fields, composed of members of the federal government and representatives of state governments. When the subject matter examined by the sectorial conference concerns local powers, the plenary of the conference may decide to invite to its meetings the most widespread association of local entities at the state level, permanently or on the basis of the agenda (article 8, Act 30/1992).

The Spanish Federation of Municipalities and Provinces (FEMP) is an association at the federal level that represents local entities. This association channels their functional or organic participation in the exercise of federal powers. Such representative associations of local entities exist in some States too. In Catalonia, for instance, there are two, the Catalan Association of Municipalities and Regions, and the Federation of Municipalities of Catalonia.

The control of the local entities by the Federation and the States is mostly judicial. Consequently, except for very grave and exceptional occasions, there is no hierarchical legal or political control. Apart from that, usually, the powers of coordination regarding local entities are limited to certain cases, previously established by law or based upon federal or state powers particularly strong. Such practices enhance local autonomy and the place of local entities in intergovernmental relationships. Nevertheless, they are not imposed by the federal Constitution nor by the state Constitutions. Rather, they have been freely developed by the federal legislator, according to a certain understanding of the principle of local autonomy set forth in the federal Constitution.

**13. Do different governments or administrations usually participate in organisms or entities with legal entity (public or private: consortiums, associations, foundations, private societies, etc.)? Is this joint collaboration usual for developing public works, managing services, or financing of activities? Which legal regime is applicable?**

The participation of different Administrations in consortiums, corporations or other entities with legal personality is quite common, especially over the last years. In this sense, it could be affirmed that, as a result of this tendency, our system follows the cooperative federalism model. The objects of these legal entities extend to all the fields mentioned before, such as public services and works or the financing of joint activities. Their legal regime differs in each case. A common feature would be its lack of precision, and consequently, a high level of legal uncertainty. Consortiums between the Federation and the States enjoy a minimal common regulation, which defers almost the whole regime

of each consortium (goals, organic, functional and financing regime, percentages of participation or representation) to its statutes.

When the management of conventions of collaboration between the Federation and the States requires the creation of a common organization, this may very well be a corporation. Then, corporate law applies. The participation of different public Administrations, however, poses legal problems from the perspective of free competition and contracts legislation.

**This section is not available in English**

## **VIII. TAXATION**

### **1. What is the level of state autonomy regarding incomes? Can they establish taxes? If so, are there any constraints? In other words, can they make use of the same kind of taxes (official prices, rates, extra charges, etc.) that the federation establishes? Can they use both direct and indirect taxation? Can they establish taxes over subject matters already charged by the federation?**

La Constitución española afirma que los Estados “gozarán de autonomía financiera para el desarrollo y ejecución de sus competencias con arreglo a los principios de coordinación con la Hacienda estatal y de solidaridad entre todos los españoles”. Asimismo, menciona las posibles fuentes de los recursos estatales y remite a una ley orgánica federal –ley que se ha convertido en el eje del sistema– la regulación del ejercicio de las competencias financieras estatales, de las normas para resolver los conflictos que pudieran surgir y de las posibles formas de colaboración financiera entre los Estados y la Federación (artículos 156-157).

Los Estados gozan efectivamente de autonomía financiera, pero dicha autonomía se encuentra notablemente condicionada, tanto en la vertiente de los ingresos como en la del gasto.

The Spanish Constitution provides that States "will enjoy tax autonomy for the development and enforcement of their powers, according to the principles of coordination with the State Treasury and solidarity among all Spaniards". Moreover, the Constitution lays down the possible state sources of income and defers to a federal organic law the regulation of the exercise of state tax powers, the rules to address conflicts and the mechanisms of collaboration between the States and the Federation to a federal organic law (articles 156-157).

States enjoy tax autonomy. Such autonomy, however, is importantly conditioned regarding both revenue and expenditure.

Concerning income autonomy, the Constitution allows States to establish their own taxes. This power is limited by two principles: first, States can not tax goods located outside their territory or impose taxes that hinder the free movement of goods and services; and second, States can not impose taxes over any taxable income or property already taxed by the Federation. The latter is fundamental because the Federation has imposed taxes over most taxable things. Thus States can hardly create new taxes, as the conflicts before the Constitutional Court in cases regarding the imposition of new state taxes have demonstrated. Furthermore, we should bear in mind that political parties in government tend to avoid increasing the tax burden.

The regulation of state surtaxes over federal taxes is as follows. States may impose surtaxes on federal taxes susceptible of being transferred, except for the tax on hydrocarbons' retail sales ("Ventas Minoristas de los Determinados Hidrocarburos"). Regarding the value added tax ("Impuesto sobre el Valor Añadido") and special taxes, States may only impose surtaxes when they have powers to regulate the kind of charge. In any event, such surtaxes can not diminish the federal income from the mentioned taxes or distort their nature or structure.

**2. Can states ask for credit or issue public debt within the state or federation without the authorization of the federation? Can they do this abroad? If the federation has the power to authorize these operations, which are the legal basis that regulate this?**

States can engage in credit transactions with certain limits. Such transactions can be made for a period of less than one year to respond to transitory needs, or for more than one year when the following requirements are met: a) the total amount of the credit is devoted to investment expenditures; b) the total amount of the yearly debt redemption can not exceed the 25% of the state income; c) prior authorization of the Federation when the information provided by the State shows the failure to comply with the goal of budgetary stability (this goal is established every year by the Federation and it fluctuates between the equilibrium and certain budgetary surplus).

To make credit transactions abroad and to issue public debt or to engage in any other public credit transaction, States need the authorization of the Federation. In order to grant this authorization, the Federation should take into account the compliance with the principle of budgetary stability.

**3. To what extent are state incomes important in contrast to the transfers that the states receive from the federation? How are these transfers regulated?**

According to the federal Constitution, the state Constitutions and the federal organic law to which the Constitution defers, state resources are the following:

- a) Income from their properties and others of private law
- b) State taxes, fees and special contributions
- c) Transferred taxes, totally or partially, from the Federation
- d) Surtaxes over federal taxes
- e) Participation in federal income
- f) Product of credit transactions
- g) Product of fines and sanctions within the field of state powers
- h) Public prices
- i) Allocation of resources in the federal General Budget
- j) Transferences from the Inter-territorial Compensation Funds

Generally, federal transferences are more relevant than state resources. The importance of the latter, however, has recently raised as a consequence of the increasing number or percentage of federal taxes transferred and collected by the States, particularly the income tax ("Impuesto Sobre la Renta de las Personas Físicas"). There is a relevant exception to this general framework. There are two States, which are the Basque Country and Navarra, that do not follow the general system. Rather, they enjoy a particular and asymmetric system, called "concierto" or "convenio económico". This system is essentially grounded on their own resources and a posterior contribution to the federal income. This system is expressly recognized by the federal Constitution on the basis of the historical rights of those territories. The tax regime of the Canary Islands and the Autonomous Cities of Ceuta and Melilla, located in the African continent, has certain particularities, although these are less relevant.

The transferences from the Federation to the States are mainly organized through the Inter-territorial Compensation Fund and the allocation of resources in the federal general budget. To guarantee the solidarity among all territories, every year, the general budget establishes a Compensation Fund. This Fund is distributed among all the States by Congress and Senate, through a system that requires their agreement or qualified majorities, and a previous study by the organism of tax coordination between the Federation and the States ("Consejo de Política Fiscal y Financiera de las Comunidades Autónomas"). The distribution of this Fund follows certain fixed and other variable parameters, such as the unemployment rate. States have to devote the transferences to concrete goals, although they are defined in general terms. Every year, States should inform Parliament about the destination of these resources.



Furthermore, States participate in the federal income through the sufficiency Fund. This Fund aims at covering the difference between the spending needs of each State and its income. In addition, the federal budget can allocate certain resources to the States on the basis of the amount of federal services and activities that they perform as well as to guarantee that they will provide a minimum level of fundamental public services, such as education and health, in the whole territory. Such allocations can be established when the States are not able to provide a minimum level of these services on the basis of the taxes transferred by the Federation and the resources from the sufficiency Fund.

**4. Do states participate in federal taxes? If so, in which taxes and to what extent do they participate? When states participate in federal taxes, do they have any kind of normative power (for instance, power to fix deductions, exemptions, discounts, etc.)?**

States effectively participate in federal taxes. The number and percentage of federal taxes transferred to the States has increased. At present, taxes susceptible of being transferred, and actually transferred in a percentage between the 33% and 100%, are the following:

- a) Income tax, 33% as a maximum
- b) Capital gains tax
- c) Capital transfer tax/inheritances and donations
- d) Transfer tax and stamp duty
- e) Gambling
- f) Value added tax, 35% as a maximum
- g) Certain special taxes, 40% as a maximum
- h) Special tax on electricity
- i) Special tax on certain means of transport
- j) Retail sales tax on certain hydrocarbons

States have certain rule-making capacity regarding the transferred taxes. Federal legislation limits this capacity with regard to each tax. In any event, this capacity should respect the principles of solidarity and no discrimination on the grounds of territory. In addition, the effective global tax burden in each State should be analogous to the burden in the rest of the federal territory.

**5. Do states receive direct transfers or funds from the federation? What criteria are used to determine the amount of these transfers? Do states participate in the determination of the amount of transfers? If so, through which mechanisms?**

As I mentioned before, a relevant percentage of the state income comes from the resources allocated to the States in the different Compensation Funds of the federal budget in order to ensure the principle of solidarity among all of them as well as the provision of an homogeneous minimum level of fundamental services. The system to fix the amount of these transferences is very complex and the criteria used lack precision.

To some extent, States can participate in the operation of this system. Such participation takes place through the "Consejo de Política Fiscal y Financiera de las Comunidades Autónomas". This is an organism of coordination composed of the federal ministers of finance, the treasury and public administrations and the state ministers of the treasury. Generally, the decisions are taken by qualified majority, although the representatives of the Federation enjoy a prevalent position. The last decision corresponds to the Parliament.

With regard to the transferences concerning federal services performed by the States, instead of following the above ordinary multilateral system, a bilateral commission is in charge of fixing them. The Federation and the State involved participate in this commission on equal footing.

**6. Can the federation intervene in what the transferred funds will be allocated to? If so, in which subject matters? To what extent? Generically or specifically? Can the federation**

**determine their management or procedure? In general, how has the federal spending power determined state powers? What is its percentage with regard to state incomes? How does this system work regarding other federal and state transfers to local governments?**

The federal spending power is very relevant in the Spanish system as well as in any other federal system. In our system, this is a very controversial issue. The Constitutional Court has addressed this problem in several occasions. In its decision 13/1992, on February 6, the Constitutional Court summarized its doctrine.

The constitutional doctrine states the following: a) the federal spending power is not an autonomous power that can distort or limit powers granted to the States. Consequently, there is no independent spending power coming from the federal tax power; b) the Federation may only exercise powers in connection to the spending activity when the Federation has powers on the subject matter being funded; c) the Federation should seek the general interest through, rather than in spite of, the allocation of powers; d) the Federation can not establish conditions or the goals of the funds beyond the scope of its tax coordination powers; e) the federal direct and centralized management of funding activities charged to federal funds is only admissible when this is essential: first, to secure the full efficacy of these activities, second, to guarantee equal access and enjoyment of the funds to the potential recipients in the whole federal territory, and third, to avoid going above the global amount of funding provided. Otherwise, the general rule is the decentralized management of the funding by the States.

Although we do not have precise information about the percentage of funding resources out of the global amount of state income, we can affirm that the federal spending power has determined to a great extent the exercise of state powers. Generally, these same rules are applied to the funding of local entities by the Federation or the States. In this case, since local powers and resources are in a weaker position, local entities are more dominated by the federal or state spending power.

**7. What follows from the principle of "tax solidarity" among states? In other words, what kind of economic contributions do the states make to the federation? How does this system work, on the basis of which criteria?**

The principle of solidarity is essentially satisfied through the different Inter-territorial Compensation Funds and the allocation of resources to the States with the goal to achieve greater equality among them. Consequently, solidarity is sought by means of taxes collected in each territory and then distributed by the federal budget and the different Funds with an equalizing goal. Although the legislation and final decisions are taken at the federal level, ("Consejo de Política Fiscal y Económica de las Comunidades Autónomas", federal government and Parliament), there is an effort to enhance cooperation between the Federation and the States, either multilaterally through the "Consejo de Política Fiscal y Económica de las Comunidades Autónomas", or bilaterally through the several Commissions between the Federation and each of the States.

**8. Can the federation unilaterally compensate the debts that states owe to the federation (for example, reducing federal transfers)? If so, in which fields do this power exist? Do states have any safeguards (right of audience, judicial actions, etc.)?**

In general, the unilateral compensation of debts is only admissible regarding local debts. It is not possible regarding state debts to the Federation. Nevertheless, if any public Administration fails to comply with the goals concerning budgetary stability and, as a consequence, Spain fails to fulfill its obligations before the European Union, this Administration will be held responsible. The process through which this responsibility is imposed must ensure the hearing of the Administration. Given the lack of other provisions and in the case of resistance from the Administration obliged to pay, the Federation might apply the mentioned mechanisms of compensation. Until now, however, there has not been any case where this question formally arose.

**9. Who is in charge of the management, liquidation and collection of taxes? Can local governments collect taxes on behalf or by order of the federation or the state where they are located? To what extent and in which fields is this method used? To what extent is it relevant?**

In principle, each territorial entity has the power for the management of its own taxes. There is, however, a long tradition of collaboration with entities that are not the particular tax holders. According to this tradition, the federal Constitution, federal legislation, as well as state Constitutions provide for the collaboration between the Federation and the States in this matter.

According to the applicable legislation, States and local entities within their territory may adopt such techniques of collaboration regarding the taxes established by them. Usually, this form of collaboration applies to taxes previously transferred.

The collaboration between territorial entities is not necessarily top-down. Rather, it can also be bottom-up.

**10. What is the percentage of public spending in which each level of government –federal, state and local- incurs? How would these percentages change excluding the spending on defense, education, health, pensions and administration of justice? How many civil servants or administrative officials have each level of territorial government? Which are the figures excluding the above-mentioned fields?**

The data about public spending at each level of government are little, unreliable and outdated. The latest official data are of 1998.

<b>Public expenditure</b>	<b>Billions of ptas.</b>	<b>%</b>
Federation	27,6	66,0 %
States	9,1	21'9 %
Local entities	5'1	12'1 %
Total	41'8	100,0

Source: "Informe Económico-Financiero de las Administraciones Territoriales. Ministerio (federal) para las Administraciones Públicas.

We should bear in mind that, after that year, the Federation transferred services regarding education and health to many states. Consequently, the figures about federal and state expenditure have experienced a substantial change. At present, state expenditure may very well amount to a 35-40%.

The following tables show the information concerning the administrative staff of the different public Administrations. This information has been provided by the federal Ministry of public Administrations, on July 1, 2002.

<b>Public administrative staff</b>	<b>Number</b>	<b>%</b>
Federation	558.505	24'45
States	1.192.673	52'20
Local entities	533.274	23'35
Total	2.284.452	100'0

<b>Federal administrative staff</b>	<b>Number</b>	<b>%</b>
Federal General Administration	238.090	42'63
Special instrumental entities	56.690	10'15
Security Forces	115.480	20'69
Army	118.401	21'19
Judiciary	27.520	4'93
Not-transferred Universities	2.324	0'41
<b>Total</b>	<b>558.505</b>	<b>100'0</b>

This total number does not include the administrative staff working for the postal services ("Sociedad Estatal de Correos y Telégrafos, S.A."), which are 54.109 people. They are not included in this table because this entity has adopted the form of a private corporation. Consequently, it is not included in the Federal General Administration. With regard to the General Administration of the Federation, its staff is distributed as follows.

<b>General Administration of the Federation</b>	<b>Number</b>	<b>%</b>
Ministries and autonomous organisms	120.913	50'8
Non-university education	7.169	3'0
Penitentiary centers	17.494	7'3
Social Security	32.088	13'5
National Heritage	1.442	0'6
Tax Agency	27.611	11'6
Defense labor staff	29.596	12'4
Social Security's Health services	1.777	0'8
<b>Total</b>	<b>238.090</b>	<b>100'0</b>

This information should be completed with the administrative staff working in the States and local entities

<b>State administrative staff</b>	<b>Number</b>	<b>%</b>
<b>GENERAL ADMINISTRATION</b>	<b>1.063.815</b>	<b>96'5</b>
- Ministries and autonomous organisms	242.129	22,0
- Non-university education	451.668	41'0
- Health services	370.018	33'6
<b>JUDICIARY</b>	<b>22.993</b>	<b>2'1</b>
<b>SECURITY FORCES</b>	<b>15.191</b>	<b>1'4</b>
<b>Total</b>	<b>1.101.999</b>	<b>100'0</b>

We should add 90.674 people working in Universities transferred to the States, among which 68.001 are teaching personnel and 22.673 are not.

<b>Local administrative staff</b>	<b>Number</b>	<b>%</b>
Civil servants with national authorization	5.639	1'1
Others	527.635	98'9
<b>Total</b>	<b>533.274</b>	<b>100'0</b>

Although civil servants with national authorization can be regarded, to some extent, as local staff, the Federation retains important legislative and administrative powers over them, specially

regarding selection, functions, posts, mobility and disciplinary regime. In spite of their low number, these positions are qualitatively very relevant, since they have exclusive mandatory functions of assessment, legal defense and local notarization.

**11. To what extent are the relationships between levels of governance regarding the tax system satisfactory? Which elements are more satisfactory? Which elements are less satisfactory? At present, is there any trend that should be noticed?**

The state tax system is relatively satisfactory. Among the most valued aspects, we should mention the constitutional proclamation of the principle of state tax autonomy as well as the development of this principle by the constitutional case-law. However, these elements have not guaranteed a tax system considered to be sufficient. Another relevant element is that the federal Constitution regulates the system at a minimum level. On the one hand, this reduces state safeguards. But, on the other hand, it has allowed a relevant development of the tax system from its origins to the present. This development, favored by intense intergovernmental relationships and relationships between the different political forces, has allowed certain solutions that years ago would have been regarded as unacceptable, such as the transference to the states of a significant part of the income tax, or the recognition of rule-making capacity concerning some transferred federal taxes. This situation allows to foresee the enhancement of the recently taken measures in a medium or long term.

Among the most unsatisfactory aspects, we should point out that state tax autonomy is mostly grounded on spending autonomy rather than on income autonomy, since the main sources of state income have an external nature. Nevertheless, spending autonomy has been reduced through the controversial legislation regarding budgetary stability, while income autonomy has improved. A second element very criticized is the lack of transparency of the system. The Federation has rejected several proposals to publish the information needed to know the financing balances of the several states, that is the difference between their contribution to the federal budget and the amount of money received from the Federation. This situation undermines the legitimacy of the system of solidarity and does not allow to assess the "justice" of the tax system.

Among the tendencies of future evolution, we could mention the following: the claim for more transparency; the increasing income autonomy of the States; the claim from some States to be able to manage all federal taxes; and finally, in some cases, the claim to get closer to the system of "concierto" or "convenio económico" enjoyed only by two states, the Basque Country and Navarra, which is generally regarded as a truly economic privilege.

**12. Can the federation establish the maximum or specified levels of state indebtedness or budgetary deficit? Can the federation establish the maximum wage of public officials (federal, state, local, etc.)?**

According to its economic powers, the Federation may fix, and it actually does, the budgetary goal to be achieved by the States and the local entities. Going beyond the goal of budgetary stability established by the European Union, the Federation enacted a very controversial regulation that has intensely undermined the spending autonomy of the States. Some States challenged such regulation before the Constitutional Court, but the Court has not issued a decision yet.

In general terms, the federal legislation lays down the following rules: a) the elaboration, enactment and enforcement of public entities' budget should respect budgetary stability; b) budgetary stability is understood as the situation of equilibrium or surplus, according to the definition established in the European System of National and Regional Accounting; c) the federal government, with a previous report from the "Consejo de Política Fiscal y Financiera de las Comunidades Autónomas", determines every year the stability goal for the following three years, for the whole public sector as well as for each group of public Administrations; d) Congress and Senate should approve or reject such goal; e) the "Consejo de Política Fiscal y Financiera" determines the particular goal of budgetary stability for each State; f) if there is no agreement on such goal, each State should manage its budget in a situation,

at least, of equilibrium; g) the government and its subordinated organisms supervise the compliance of state obligations. In order to do that they enjoy coercive powers and powers to impose sanctions.

The Federation also established upper limits to the increase of the administrative staff's global remuneration. This decision was challenged before the Constitutional Court. The Court held that those measures were legitimate because the Federation enjoyed widespread economic powers as well as basic powers regarding civil servants. However, it held that such upper limits could not be applied to concrete bodies of civil servants, rather they should operate as general limits to the global increase of remunerations. The Federation developed a strict control of the measures passed by other public Administrations to indirectly increase the their staff's remuneration. The Constitutional Court declared the unconstitutionality and annulled such measures.

**13. Are there coordination mechanisms among the different levels of governance? If so, are there institutions with a political nature (for instance, an assembly of territorial representation –Senate-, governmental institutions -councils of prime ministers-, etc.)? Are there mechanisms of technical coordination? (i.e., deductions in quotes of subcentral taxes in central taxes, etc.).**

Such mechanisms of coordination exist. However, they could be improved from the state perspective. First, although the Senate enjoys a more active participation than in other fields, we already mentioned its incapability to represent state interests. As a result, the tax intergovernmental coordination essentially takes place within the "Consejo de Política Fiscal y Financiera de las Comunidades Autónomas", as well as the Mixed Commissions between representatives of the Federation and each State.

The States have claimed for the total or partial decentralization of the agency that administrates the tax powers of the Federation, the so-called "Agencia Estatal de Administración Tributaria", or at least for their participation in the organs of direction. In 2001, a legislative amendment recognized the participation of six representatives of the States in the Directive Superior Council of the this Agency, with functions to assess, advise and propose. It was also created the so-called "Comisión Mixta de Coordinación de la Gestión Tributaria", with similar functions, for the participation of the States in the Agency. Within the territory of the States, there will be a "Consejo Territorial de Dirección para la Gestión Tributaria", to enhance the collaboration between the Federation and the States.

Coordination is specially needed concerning taxes totally or partially transferred to the States, which collect most of them. As a result, different mechanisms have been established. There is a "Junta Arbitral" to solve conflicts. Its composition varies depending on whether the conflict is between the Federation and a State or between two States. Its composition, however, reveals the prevalence of the federal representation, since the Federation has the casting vote.

## **IX. LANGUAGES**

**(Section to be addressed only in those systems where their multilingual reality is somehow legally recognized)**

**1. Does the Federal Constitution recognize more than one official language in the whole federal territory? If so, which are they? At the federal level, are they officially used on equal basis in the whole territory of the federation by the different authorities? Are they equally used in private? Why? Does the federal Constitution or law establish linguistic citizens' rights or duties?**

The federal Constitution recognizes one official language for the whole territory and the possibility for the state Constitutions to establish other official languages in their respective territories. Thus the federal Constitution does not determine the number of these other languages, which, in any event, can not be extended to the whole federal territory. The official use of these languages is not totally equal.

In the private sphere, citizens are free to speak them. The Constitution lays down the duty of all citizens to know the Spanish language.

**2. Beyond recognizing or not more than one official language, does the Federal Constitution recognize the existence of other languages and the need of protecting them as well? Could you tell, approximately, the quantitative importance of these diverse linguistic communities?**

The Constitution recognizes the existence of other "linguistic modalities", besides the official languages. It establishes that they will be respected and protected. The Catalan linguistic community is composed of approximately eleven million people, the Basque of four million and the Galician of three million. The other "linguistic modalities" or dialects (Aranés, Bable, Fable...) are spoken by a small minority.

**3. Do state constitutions recognize official languages different from those recognized by the Federal Constitution? If not, are they allowed to do it? Are federal and state official languages on an equal footing? Can states establish linguistic duties to citizens and companies different from those established by the federation? Can states exclusively or mainly use an official language different from the one established by the federation as official?**

Certain state Constitutions establish other official languages and regulate their use. The different official languages are not totally on an equal footing. States may establish, and they actually do, linguistic obligations. They often employ exclusively their own official language. However, notifications to the citizens have to be in Spanish if they ask the State to do so.

**4. Broadly speaking, which is the linguistic system regarding education?**

Spanish is a compulsory subject of pre-college education in the whole territory. The other official languages are also compulsory in their respective States. Regarding the language in which the other subjects are taught (channel-language), there are two main models, each with several variations. The first model allows the parents or the students to freely choose the channel-language. There are schools where all the education is in Spanish while in others all the education is taught in the state official language. There are also mixed schools, in which both languages are used as channel-languages. According to the second model, there is no right to choose the channel-language. All students follow the same system, which might consist either of using both official languages in variable proportions over the several phases of the educational system or of using only the state official language. There is a mixed model that recognizes the right to choose the channel-language during the first years of primary education and then establishes a unified system.

**5. To what extent are legislation and administrative practice adapted to the multilingual reality of the federation? To what extent are they the origin of conflicts between the different levels of governance or among the population? Are the different languages an important identity symbol of the state?**

Probably, it would be advisable to have a better knowledge of all the official languages in the whole territory as well as to promote the value of pluralism, particularly linguistic pluralism. Moreover, the knowledge of the state official languages by the federal civil servants who work in those states, especially judges, should be furthered. There are no remarkable problems between administrations concerning linguistic issues. With regard to individuals, some citizens living in states where there is a different official language claim that their rights concerning the federal official language are violated. States that have their own official language consider this to be one of the most relevant symbols of their identity. Actually, the States that have their own language are the ones where the claim for self-government has been, and still is, stronger.

## **X. GLOBAL ASSESSMENT AND ADDITIONAL COMMENTS**

### **1. At present, how is the level of political decentralization generally assessed? What is your assessment?**

The assessment depends on the political forces, and particularly, on the different States. In the States that historically claimed for a strong right of self-governance, after 25 years of political decentralization, there are widespread groups that demand a redefinition of the system. They seek to achieve greater levels of self-government, by means of either a new interpretation of the federal and state Constitutions, or, ultimately, the amendment of those texts, especially the state Constitutions. In these States, the political forces that openly claim for the separation from the federation are minorities. In the rest of States, the level of self-government is regarded as sufficient. There are certain political sectors that believe that the States have been granted too much power. They seek to recover certain powers for the Federation by means of a more restrictive interpretation of the federal and state Constitutions. The groups that claim for the amendment of the constitutional system to reestablish a centralized State are minorities.

In my opinion, to sum up, after 25 years, despite the fact that the States have reached a wide capacity of self-government, their autonomy is of low quality. It is acknowledged that the States have created their institutions of government, among which there is a democratically elected Parliament with full legislative powers. They have also created an important Administration and they manage a relevant economic budget. Furthermore, they have assumed powers over a significant number of subject-matters. Nevertheless, this self-government is of low quality for several reasons: first and foremost, the states can hardly design their own policies in fields sufficiently coherent and complete for these policies to have an actual capacity to transform reality. This is due to the fact that the Federation imposes in all subject-matters the basics at such level of detail that the capacity of the States to establish differing policies is severely undermined. Moreover, the fields where the States may act are very fragmented. So, state activity is residual and interstitial. This diminished capacity to establish their own policies is not compensated with participation in federal institutions -the case of the Senate is particularly revealing, but also the appointment of justices to the Constitutional Court, the appointment of members of the General Council of the Judicial Power, the Bank of Spain, the Securities and Exchange Commission-, nor in the definition of federal policies. Other shortcomings to be emphasized are the lack of participation in the European Union and the restriction and fragmentation of merely executive functions. Apart from that, I believe that the excessive fragmentation of the territory in 17 States has hindered the operation of the system, yet this is an irreversible feature of the established model.

### **2. What are the main historical claims by states? To what extent are they satisfied?**

Twenty five years ago, the claim for self-government essentially amounted to the power to establish own policies in significant fields, such as economic, cultural, social or political. As I mentioned before, this ideal model, which should certainly be further clarified in its theoretical elaboration and in its practical application, but can not be renounced if our goal is a truly political autonomy, has not been achieved. However, neither participatory nor concurrent models of allocation of powers have led to significant levels of self-government.

### **3. What are the risks and main opportunities for the development and consolidation of the system of political decentralization?**

The risks have already been mentioned. The solutions, if we share the same diagnostic and seek to increase the levels of self-government, is a more generous interpretation and application of the Constitutions in favor of the States, or the amendment of those texts.

### **4. What are the main trends of development? Which is the likelihood of them coming true?**



The tendencies have already been mentioned. Given the fact that any amendment or reinterpretation requires the support of qualified federal majorities, I think that in the short and medium term the present situation will be maintained. That is, the Constitutions will be moderately interpreted and applied, more or less restrictively vis-à-vis the aspirations of the States depending on the party in government, particularly, on whether this party enjoys absolute majority or not, and as a result, on its need to compromise with other political forces.

**5. Generally, would you say that the system is becoming more centralized, decentralized or that it is in a relative equilibrium?**

In my opinion, over the last years, the system is becoming more centralized.

**6. Would you like to add any additional comment about the political decentralization of the federation that was not mentioned in the Questionnaire? Would you like to make any suggestion about the structure or the contents of it?**

I believe that the Questionnaire is well elaborated and complete.

**7. Would you mind listing particularly remarkable literature -on the basis its prestige, depth, clarity, approach-, which allows to achieve a better knowledge of your federal system?**

E. Aja et alii, *El sistema jurídico de las Comunidades Autónomas*, Ed. Tecnos, Madrid 1985.

S. Muñoz Machado, *Derecho Público de las Comunidades Autónomas*, Ed. Civitas, Madrid, 2 vols, 1982 y 1984

E. Albertí, et alii, *Manual de dret públic de Catalunya*, Ed. Institut d'Estudis Autònoms y Marcial Pons, 3ª ed. Madrid-Barcelona 2002.

J.Leguina Villa, *Escritos sobre autonomías territoriales*, Ed. Tecnos, 2ª ed., Madrid, 1995.

E. Argullol, *Desenvolupar l'autogovern*, Ed. Empúries, Barcelona, 2000 (Spanish translation available).

A. Bayona, *El dret a legislar en l'Estat Autòmic*, Ed. Escola d'Administració Pública, Barcelona, 1993 (Spanish translation available, Tecnos Ed.).