

Devolution (Further Powers) Committee

Report on Fact Finding Visit to Madrid and Seville: 10-11 December 2015

Purpose

1. This report summarises the key findings from a recent fact finding visit to the Parliament of Seville and the Cortes Generales in Madrid. The purpose of the visit was to gain an improved understanding of the operation of inter-governmental relations within Spain, from a 'federal' level parliament and a 'regional' parliament, with a particular emphasis upon the means via which legislatures within Spain scrutinise these relationships.
2. We wish to express our thanks and gratitude to the people whom we met in Madrid and Seville. In particular, we wish to express our thanks to Maria Roso from the Parliament of Andalusia and Fernando Galindo Elola-Olaso of the Congress of Deputies who organized the visit.
3. We are also grateful to our adviser, Professor Nicola McEwen of the University of Edinburgh and to Dr Sandra León of the University of York for this assistance in the preparation of briefing material in advance of the visit.

Spanish Constitutional Structure

4. The 1978 Spanish Constitution details the territorial organisation of the Spanish State. Section Two of the Constitution states-

“The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards; it recognises and guarantees the right to self-government of the nationalities and regions of which it is composed and the solidarity among them all”.
5. The territorial organisation of the State and in particular the competences of autonomous communities are set out in Part 7 of the Constitution. The powers devolved to autonomous communities across Spain vary with the most significant degree of devolution being devolved to the 'historic regions' of the Basque Country, Catalonia and Galicia. Each autonomous community's powers are set out in a 'Statute of Autonomy' which has been approved in each region as well as within the Spanish Parliament. Broadly speaking there are three forms of competences set out in the Constitution. Firstly, competences that are exclusive to central government. Secondly, competencies that are exclusive to autonomous communities and lastly, competencies that are shared.
6. Shared competencies tend to involve the central government setting the legal framework and autonomous communities being responsible for implementation. Alternatively, competencies between the two tiers of government can overlap resulting again in shared powers. Where a competence is passed to an autonomous community but this power is not used then the power reverts back to the central government. In some

instances, autonomous communities have not taken on responsibility for competencies devolved due to concerns at the financial implications of doing so. Provision also exists for the transfer of competencies from central government to autonomous communities. This process requires to be approved by the parliament of the relevant autonomous community and both Houses of the Spanish Parliament.

7. Alternatively, the central government can also legislate in devolved matters where this is considered to be 'necessary in the general interest'. Section 150(3) of the Constitution details this power in the following terms-

"The State may enact laws laying down the necessary principles for harmonising the rule-making provisions of Self-governing Communities, even in the case of matters over which competence has been vested in the latter, where this is necessary in the general interest. It is incumbent upon the *Cortes Generales*, by overall majority of the members of each House, to evaluate this necessity".

8. In addition to the Constitution, the Spanish Constitutional Court acts as the key arbiter in interpreting the meaning of the Spanish Constitution particularly with regard to conflicts between central and autonomous community governments. Accordingly, the rulings of the Court since 1978 provide a further source of constitutional law regarding the distribution of competencies within the Spanish State.

Financial Arrangements

9. Whilst the Basque Country and Navarra have a financial structure approximating to full fiscal autonomy, for the remaining autonomous communities the structure of territorial finance is more restricted and is set out in Sections 156 to 158 of the Spanish Constitution. Specifically, section 156 of the Constitution states:

"Self-governing Communities shall enjoy financial autonomy for the development and exercise of their powers, in conformity with the principles of coordination with the State Treasury and solidarity among all Spaniards".

10. The legal framework of territorial finance is set by national laws with autonomous communities having secondary tax powers. Therefore, the use of tax powers has to conform with national legislation and, for example, must not create fiscal barriers such as to the free movement of goods and persons within the Spanish State. In broad terms, autonomous communities account for around 35% of Spanish public spending and can obtain finance from three main sources. Firstly, autonomous communities obtain receipts from 50% of personal income taxes, from sales tax and from 58% of what are termed 'special taxes'. Secondly, revenue from 'devolved taxes' such as inheritance taxes and lastly, financial receipts from the sales of assets and from sanctions and fines.

11. In addition, an inter-territorial compensation fund operates to provide a solidarity mechanism between regions of Spain. Broadly speaking this fund is allocated on the basis of population share although other factors such as island communities are also taken into account in determining the distribution of funds. Section 158 of the Spanish Constitution states that this fund has:-

“the aim of redressing inter-territorial economic imbalances and implementing the principle of solidarity, a compensation fund shall be set up for investment expenditure, the resources of which shall be distributed by the Cortes Generales among the Self-governing Communities and provinces”.

12. This fund is reviewed and agreed every four years. The funds allocated by the inter-territorial compensation fund are a source of considerable controversy within Spain. For some autonomous communities, such as Andalusia, distribution on the basis of population is the preferred basis for the distribution of funds. For others, such as Catalonia, wish to see an ‘ordinality’ principle incorporated into the fund whereby autonomous communities would maintain their position within the ranking of regions in terms of the distribution of monies.

13. The impact of the financial crisis of 2008 resulted in the territorial finance provisions of the Spanish Constitution being amended to provide the central government with a greater degree of oversight into the finances of public authorities including, autonomous communities. This amendment was pursued due to the level of public indebtedness of many public bodies, including autonomous communities, in Spain following the financial crisis. The amended section 135 of the Constitution is provided at Annex A to this paper.

14. For many autonomous communities this amended Constitution is perceived as also being a means via which the policy responsibilities of autonomous communities can be eroded. For example, this amendment required the Andalusian Government to lose its control over not-for-profit banks which due to changes in the definition of public debt were required to become limited companies and therefore their regulation became a responsibility of central government. The impact of the financial crisis combined with the on-going review of territorial finance and changes to the structure of financing has resulted in inter-governmental relations within the sphere of territorial finance having become a key site of conflict and tension in recent years.

Inter-governmental relations

15. There are a wide range of formal forums in which inter-governmental relations between autonomous communities and central government occur in Spain. In Andalusia, a range of bi-lateral and multi-lateral structures are used to seek to resolve issues between the Andalusian and the Spanish Governments without the need for recourse to the Constitutional Court.

16. A range of bi-lateral Committees exist to consider and resolve issues in a wide range of policy areas, such as agriculture and energy, and form a key means for negotiation between the autonomous community and central government. Where legal issues are not resolved and there is the likelihood that a case may be taken to the Constitutional Court, a procedure has developed whereby a Bi-lateral Commission is established to consider the issue prior to a case being taken to the Court. These commissions have a central role in relation to territorial finance as whilst agreements are reached in a multi-lateral commission, termed the 'Financial and Political Council of the Autonomous Communities', these decisions have to be ratified in a bilateral commission.
17. This process has developed over time and is now followed in relation to all cases relating to legislative measures. Where the issue concerns a non-legislative measure, the Spanish Government can decide to take the case straight to the Constitutional Court whereas an autonomous community must first enter into the bi-lateral commission procedure before recourse to the Constitutional Court. The Commission will consist of a central government Minister, an Autonomous Community Minister and the Commission will be chaired by a Minister. The Andalusian Parliament will ensure that a parliamentary committee is tasked to scrutinise the work of a bi-lateral commission where this involves a change to legislation.
18. Upon the establishment of a Commission, documentation is published, and provided to the relevant legislatures, outlining the nature of the dispute and the position of the two parties. Frequently, technical working groups are established and the documentation produced by these groups are also published. Where any final agreement is reached, the text of the final agreement is also published and provided to the relevant legislatures. This process must be concluded within a timescale of nine months. **Generally speaking, there was a perception amongst those we met both in Madrid and Seville that the bilateral, negotiated approach had worked well in reducing the level of formal conflict which required recourse to the courts. Moreover, the process of being required to publish the nature of the issue and position of the relevant parties at the outset of a Commission being established and then the text of any final agreement was seen as being a key means of ensuring transparency around these processes.**
19. If agreement is not reached, then the government which has instigated the case must then decide whether to take the case to the Constitutional Court. It is important to note that cases brought to the Constitutional Court can be raised not just by governments or legislatures but also by political parties or more ad hoc groupings of politicians. At the current time, the Andalusian Government has 16 cases being considered by the Constitutional Court. This was considered, by Andalusian Government officials, to be a higher than normal number of cases which was considered to be a function of a perceived 're-centralising trend' on the part of the then Spanish Government arising from the amendment to the constitution on territorial finance, discussed above.

20. In terms of multi-lateral structures, two main forums were discussed with us in the meetings we held. Firstly, the 'Conference of Presidents' brings together the Spanish Prime Minister and the Presidents of the 17 Autonomous Communities. This meeting has only met formally on three occasions since 2004. **The second forum that was considered to be of far greater importance in a 'multi-lateral setting' are structures termed 'sectoral conferences'**. Sectoral conferences bring together regional ministers from all 17 autonomous communities along with the relevant central government minister. Sectoral conferences are required to meet at least twice a year and at present there are 38 sectoral conferences in operation. The main functions of sectoral conferences are three-fold. Firstly, to agree on State-wide legislation that affects the competencies of autonomous communities, for example, education legislation. Secondly, to agree joint positions on European Union issues. Lastly, to approve and evaluate joint plans and programmes, termed 'collaboration agreements', where there is usually a combination of central government and autonomous community funding involved. Collaboration agreements are not binding but rather apply only to the autonomous communities that have endorsed them.
21. **It is important to highlight that many of the politicians, officials and academics we met with stressed the importance of informal contacts and relationships in 'oiling the wheels' of inter-governmental relationships.** In particular, relationships within political parties were of critical importance as were relationships which developed through participation in sectoral conferences, particularly relationships between participants from different political parties.

The Role of Parliament

22. With regard to the role of Parliament, the traditional mechanisms of scrutiny were mentioned at all of the meetings we held such as, parliamentary questions, plenary debates and Committee evidence sessions. At the meetings we held in the Parliament of Andalusia, the vertical networks within political parties between Madrid and Seville were cited as a key means of information flow. **However, the importance of the publication of information from bilateral commissions, at the outset of bilateral commissions and upon their conclusion, was cited as being a key means of undertaking scrutiny as were the minutes of meetings and information papers associated with the meetings of sectoral conferences.** For example, recent parliamentary scrutiny in the Andalusian Parliament of inter-governmental relations, cited during our meetings, related to scrutiny of the governmental response to refugees arriving on the Andalusian coast which had relied on documentation obtained from the Sectoral Conference on Justice.
23. In Madrid, there was a greater emphasis in stressing the role of autonomous community parliament's in scrutinising inter-governmental relations. Generally speaking the role of the Congress of Deputies was perceived as being less related to scrutiny of outcomes regarding inter-governmental

relations and more focused on the role of the Congress in being able to challenge legislation passed by Autonomous Communities.

24. In the Senate, despite having a role as a Chamber with a degree of territorial representation in theory, the meetings we held indicated that in practice, Senators did not perceive a particular territorial or regional dimension to their work. This position was reflected in the Senate having an Autonomous Community Committee which tended to hold one meeting per parliamentary session reflecting the lack of a perceived role amongst Senators in being responsible for scrutiny of these issues or relevant actors in this area. **In this regard, the emphasis for scrutiny of inter-governmental relations in Spain appeared to lie primarily with autonomous community parliaments rather than with the national parliament.**

Ombudsman

25. Although not directly related to inter-governmental relations, a post that was frequently mentioned in the meetings we held, and which we considered to be of interest, was that of **'Defender of the People'** which is a position analogous to that of an Ombudsman. This post is established under section 54 of the Spanish constitution and is intended to protect the rights of individuals set out in the constitution.
26. This post is independent of government with both an 'Ombudsman' having been created at national level as well as by each autonomous community with appointment requiring to be ratified by a majority vote in the relevant legislature. In addition, the Ombudsman provides an annual report to Parliament whilst Parliament can require the Ombudsman to undertake reports on particular issues. The post does not involve oversight of legislation but rather relates to the application and implementation of laws and the operation of public services with regard to the rights of the individual. **A key power of the Ombudsman is the ability to raise an appeal with the Constitutional Court regarding an Act passed by the relevant government.**

Lessons Learned

27. The operation of inter-governmental relations in Spain clearly shares similarities with the position in the UK notably with regard to the importance of informal networks and the role of political parties as key conduits of information exchange between central and devolved institutions. The asymmetry of the Spanish political structure, the dominance of executives in inter-governmental relations and the means via which these structures have developed incrementally, and continue to do so, was also familiar.
28. However, the extent and scale of the formal inter-governmental structures, both on a bi-lateral and multi-lateral basis, marked a significant difference. In terms of the focus of our meetings in Spain, upon the role of legislatures in scrutinising these relationships, the ability of legislatures to fulfill this role was markedly superior to the position of the Scottish Parliament and indeed of

legislatures in the UK generally. Whilst the traditional methods of parliamentary scrutiny were utilised in both the legislatures that we visited, **the ability to undertake effective scrutiny was greatly enhanced due to the availability of information regarding the purpose and content of inter-governmental meetings and agreements reached.**

29. In particular, we were struck by the availability of information regarding the work of bi-lateral commissions. **Given that these commissions deal with issues that are contentious between governments, the publication of information at the outset and conclusion of a dispute provided a key means of enabling parliamentary scrutiny to meaningfully take place and indeed aid transparency in general.**

30. In this regard, whilst we recognize the need for governments to have a shared private space in which to engage the transparency procedures in Spain clearly exemplify that such processes can still effectively operate whilst providing a substantive degree of information to legislatures and indeed the public in general. **Accordingly, the meetings we held in Spain reaffirmed our view that implementing the principles of transparency and accountability in the inter-governmental processes which will underpin the further devolution of powers proposed in the Scotland Bill is not only necessary but also eminently achievable.**

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Annex A – Section 135 of the Spanish Constitution – Amended 27 September 2011

1. All public administrations will conform to the principle of budgetary stability.
2. The State and the Self-governing Communities may not incur a structural deficit that exceeds the limits established by the European Union for their member states.

An Organic Act shall determine the maximum structural deficit the state and the Self-governing Communities may have, in relation to its gross domestic product. Local authorities must submit a balanced budget.

3. The State and the Self-governing Communities must be authorized by Act in order to issue Public Debt bonds or to contract loans.

Loans to meet payment on the interest and capital of the State's Public Debt shall always be deemed to be included in budget expenditure and their payment shall have absolute priority. These appropriations may not be subject to amendment or modification as long as they conform to the terms of issue.

The volume of public debt of all the public administrations in relation to the State' gross domestic product may not exceed the benchmark laid down by the Treaty on the Functioning of the European Union.

4. The limits of the structural deficit and public debt volume may be exceeded only in the case of natural disasters, economic recession or extraordinary emergency situations that are beyond the control of the State and significantly impair either the financial situation or the economic or social sustainability of the State, as appreciated by an absolute majority of the members of the Congress of Deputies.
5. An Organic Act shall develop the principles referred to in this article, as well as participation in the respective procedures of the organs of institutional coordination between government fiscal policy and financial support. In any case, the Organic Act shall address:
 - a) The distribution of the limits of deficit and debt among the different public administrations, the exceptional circumstances to overcome them and the manner and time in which to correct the deviations on each other.
 - b) The methodology and procedure for calculating the structural deficit.
 - c) The responsibility of each public administration in case of breach of budgetary stability objectives.
6. The Self-governing Communities, in accordance with their respective laws and within the limits referred to in this article, shall take the appropriate procedures for effective implementation of the principle of stability in their rules and budgetary decisions”.