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

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

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Summary

This is the 4th report assessing the implementation of the Charter in Estonia.

The rapporteurs conclude that the country's system of local self-government works well and that the obligations of the Charter are generally fulfilled.

They note with satisfaction the positive impact of the 2017 territorial administrative reform. The delegation also notes the increasing use of new technologies for administrative and democratic purposes, creating more engagement opportunities for the citizens. The delegation evaluates favourably the increasing recognition of the Association of Estonian Cities and Municipalities since its creation in 2018. In addition, the rapporteurs highlight the creation of a dedicated Ministry with responsibility issues concerning local self-government.

However, the report points out a few issues that deserve special attention. Notably, the persisting ambiguity regarding the division of competences; transfers of competences that are not always accompanied by the necessary financial resources; the insufficiency of the equalisation fund, the inadequacy of the equalisation formula and shortcomings in the consultation procedures on legislation affecting directly local government actors. There is additionally a dependence of local government on state grants for implementation of their obligations and only limited possibilities for local governments to leverage own resources.

Therefore, it is recommended that Estonia revise the legislation on the division of tasks and competences between local and national levels, to allocate to local government financial resources commensurate with their responsibilities and increase the possibilities for local government to generate own resources by allowing them to introduce additional local taxes. In addition, the delegation recommends revising consultation mechanisms to ensure effective, timely and meaningful consultation with subnational authorities. Furthermore, it is recommended that Estonia increase resources allocated to the equalisation fund and revise the criteria of distribution.

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

RECOMMENDATION 496 (2023)²

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

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

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

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

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

e. the Congress priorities set up for 2021-2026, in particular priority 6b that concerns the quality of representative democracy and citizen participation;

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

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

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

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

j. the previous Congress Recommendation on the monitoring of the European Charter of Local Self-Government in Estonia [[Recommendation 401\(2017\)](#)];

k. the explanatory memorandum on the monitoring of the European Charter of Local Self-Government in Estonia.

2. The Congress points out that:

a. Estonia joined the Council of Europe on 14 May 1993, signed the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter") on 4 November 1993 and ratified it on 16 December 1994. Estonia signed the Additional Protocol to the European Charter of Local Self-Government on the rights to participate in the affairs of a local authority (CETS No. 207) on 16 November 2009 and ratified it on 20 April 2011;

b. the Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (hereinafter referred to as Monitoring Committee) decided to examine the situation of local and regional democracy in Estonia in the light of the Charter. It instructed Harald Bergmann, Netherlands (L, ILDG) and Sören Schumacher, Germany (R, SOC/G/PD), with the task of preparing and submitting to the Congress a report on the implementation of the Charter

² Debated by the Chamber of Local Authorities during the 45th Session on 25 October 2023 and adopted by the Congress on 25 October 2023 (see document CPL (2023)45-03, explanatory memorandum), rapporteurs: Harald BERGMANN, Netherlands (L, ILDG) and Sören SCHUMACHER, Germany (R, SOC/G/PD).

in Estonia. The delegation was assisted by Dr Bríd Quinn, member of the Group of Independent Experts on the European Charter of Local-Self-Government, and with the Congress Secretariat;

c. the monitoring visit took place from 18 to 20 April 2023. The Congress delegation met representatives of various institutions at all levels of government. The detailed programme of the remote monitoring is appended to the explanatory memorandum;

d. the co-rapporteurs wish to thank the Permanent Representation of Estonia to the Council of Europe and all those with whom they had exchanges during these meetings.

3. The Congress notes with satisfaction:

a. the generally positive organisational impact of the territorial administrative reform carried out in 2017 with 79 rather than the previous 213 municipalities now in operation;

b. the increasing use of technology for both administrative and democratic purposes. Estonian citizens now have more engagement opportunities and easier and more streamlined access to services and information through e-services, e-participation and e-inclusion processes which are highly developed and effectively deployed in Estonia's local government sector;

c. the expanding role and increasing recognition of the newly created Association of Estonian Cities and Municipalities (in existence since 2018) which plays a developmental role among local authorities and an important representative and advisory role at national level;

d. the creation of the Ministry of Regional Affairs and Agriculture which deals with local self-government in the country.

4. The Congress expresses its concerns on the following issues:

a. the persistence of ambiguity regarding the division of competences between local and state authorities;

b. the transfer of competences not always being accompanied by financial resources commensurate with those responsibilities;

c. the ongoing dependence of local government on state grants for implementation of their obligations and the limited possibilities for local governments to leverage own resources;

d. the insufficiency of the equalisation fund and the inadequacy of the equalisation formula;

e. the shortcomings of the consultation process, which limit the input and impact of local government actors on legislation and decisions which affect them directly.

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

a. revise, in conjunction with local governments, the legislation concerning the division of tasks and functions between local and central governments;

b. allocate to local government financial resources commensurate with their responsibilities, thus enabling them to fully exercise their functions;

c. increase the possibilities for local government to generate own resources by allowing them to introduce additional local taxes;

d. increase the financial resources allocated to the equalisation fund and revise the criteria of distribution to take into account the different appropriations and potential of local governments in order to ensure the effectiveness of equalisation mechanisms in smoothing out disparities;

e. revise the existing consultation mechanisms to enable effective, timely and meaningful consultation with subnational authorities on all matters that directly concern them.

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

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

1. Pursuant to Article 1, paragraph 3, of the Charter of the Congress of Local and Regional Authorities (hereinafter referred to as “the Congress”) appended to Statutory Resolution CM/Res (2020)1, the Congress regularly prepares reports on the state of local and regional democracy in all Council of Europe member States. The monitoring missions of the Congress pursue the overall aim of guaranteeing that the commitments entered into by member states when ratifying the European Charter of Local Self-Government (hereinafter “the Charter”, ETS no. 122) are fully honoured.

2. The Republic of Estonia acceded to the Council of Europe on 14 May 1993. Estonia signed the Charter on 4 November 1993, and then ratified it on 16 December 1994. The Charter entered into force on 1 April 1995. Estonia has not deposited any reservations or declarations with respect to the Charter.

3. On 16 November 2009, Estonia also signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207), which it ratified on 20 April 2011. This protocol entered into force on 1 June 2012.

4. The Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (hereinafter referred to as Monitoring Committee) decided to examine the situation of local democracy in Estonia in the light of the Charter. It assigned Harald Bergmann, Netherlands (L, ILDG) and Sören Schumacher, Germany (R, SOC/G/PD), the task of preparing and submitting to the Congress a report on the implementation of the Charter in Estonia. They were assisted by Dr Bríd Quinn, member of the Group of Independent Experts on the European Charter of Local Self-Government (Ireland) and by the Secretariat of the Monitoring Committee.

5. The monitoring visit took place from 18 to 20 April 2023. The Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the remote monitoring is appended to the explanatory memorandum.

6. The co-rapporteurs wish to thank the Permanent Representation of Estonia to the Council of Europe and all those with whom they had exchanges during these meetings.

7. According to Rule 88.3 of the Rules and Procedures of the Congress of Local and Regional Authorities of the Council of Europe, the preliminary draft report was sent on 31 May 2023 to all interlocutors met during the visit for their comments and possible adjustments or corrections (hereinafter referred to as “consultation procedure”). The present report is based on the comments received, which have been considered by the co-rapporteurs before submission for approval to the Monitoring Committee.

2. INTERNAL AND INTERNATIONAL NORMATIVE FRAMEWORK

8. The Republic of Estonia is a unitary republic. It regained independence on 20 August 1991, a few months before the collapse of the Soviet Union. The *Riigikogu* (Parliament) is a legislative body whose 101 members are elected by citizens every four years in free general elections. The head of state is a President with limited power who serves a representative function and performs a balancing role to the parliament. The President of Estonia is elected by the *Riigikogu* and must win a two-thirds majority among member of the Parliament. If the President of the Republic is not elected by the *Riigikogu* even in the third round of voting, the President of the Parliament will convene an electoral body, composed of members of the *Riigikogu* and representatives of local councils (Article 79 of the Constitution). Executive power is vested in the government, consisting of the prime minister and 12 ministers. The judicial branch is governed by Article 148 of the Constitution. The Supreme Court is the highest court in Estonia and reviews court judgments by way of cassation proceedings. The Supreme Court is also the court of constitutional review of all legal acts. County and administrative courts are the courts of first instance and circuit courts are the courts of second instance.

9. The territory covers 45 340 square kilometres, with a population of 1,365,884 inhabitants (2023),³ an increase of 0.1-0.4% per year between 2015-2021 which, importantly, ended a previous pattern of decline.

³ <https://www.stat.ee/en/find-statistics/statistics-theme/population>

10. The last parliamentary elections were held on 5 March 2023, with voting taking place in Estonia's 12 electoral districts. There had been a number of changes of government since the 2019 elections after which, the Centre Party, led by Jüri Ratas formed a government with him serving as prime minister. His government was brought down in January 2021 after a corruption investigation. Subsequently, Kaja Kallas of the Reform Party formed a coalition government with the Centre Party, an arrangement which collapsed in June 2022. Kallas then formed a new coalition with Isamaa and the Social Democratic Party and remained in the position of Prime Minister. The liberal Reform Party (ER), led by the outgoing Prime Minister, emerged as the clear winner in 2023, garnering 31.24% of the vote and winning 37 of the 101 seats. On 10 April 2023, a coalition agreement was signed by Kallas' centre-right Reform Party, the centrist Estonia 200 Party and the Social Democratic Party. Seven ministers from the previous legislature remain in office and Kaja Kallas remains Prime Minister. However, there were other notable changes. There are 13 ministers, including the Prime Minister, two fewer than in the last administration. Of particular interest to local government is the fact that a Ministry which will have responsibility for regional and rural affairs is to be created by summer 2023.⁴ Previous governments had increased family allowances and spending on defence and education as well as raising the tax-free income threshold⁵ so the new government faces serious financial challenges which will, of course, affect local self-government.

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

11. Soon after Estonia regained its independence, the Constitutional Assembly (1991-1992) set up a working group to draft the chapter regulating local self-government. Subsequently, the provisions of the Estonian Constitution which relate to local government were defined in a manner which conformed to the principles of the European Charter of Local Self-Government (ECLSG).⁶ In 1993, Nummela and Ryyänänen described the Estonian Constitution as a showpiece of the Charter's principles.⁷

12. Chapter XIV of the Estonian Constitution guarantees the status of local self-government and assures the boundaries and financial autonomy of local government. Its Article 154 states that 'all local issues shall be decided and organised by municipalities, which shall act independently on the basis of laws. Obligations may be imposed on a municipality only on the basis of a law or by agreement with the municipality. Expenditure related to obligations of the state imposed by the law on a municipality shall be funded from the state budget'. The Chapter specifies the principles of representative democracy in local governments (Article 156), the basis for local government's relationship with the state (Articles 154, 157, 158 and 160) and the relationship between units of local government (Article 159). These Articles grant various constitutional rights to local authorities which must be upheld by the legislative and executive branches of government.

13. Article 14 of the Constitution states that the guarantee of rights and freedoms is the duty of the legislature, executive and judiciary, and of the municipalities. Article 65 further reinforces the position of local government, stating that the *Riigikogu* manages the affairs of the state over which the President of the Republic, the Government of the Republic, and other national authorities or local governments hold no power of decision. Article 79 of the Constitution prescribes that if the President of the Republic is not elected by the *Riigikogu* even in the third round of voting, the President will convene an electoral body, comprised of members of the *Riigikogu* and representatives of local councils.

14. The local government system in Estonia was significantly reformed in 2017, in accordance with the Administrative Reform Act. This Act, which required compulsory mergers if the local government did not meet the criterion for the minimum size and had not merged during local government initiation, was adopted

in 2016. Some local governments disputed the constitutionality of the amalgamation law⁸ but the Constitutional Review Chamber of the Supreme Court upheld the controversial Act. The Act aimed at creating local government units with a minimum population of 5,000 inhabitants. There are now 15 cities and 64 rural municipalities in Estonia, composed of 51 new merged local governments and 28 towns or rural municipalities whose structure remains unchanged. Irrespective of their size, all local authorities

4 The Ministry of Regional Affairs and Agriculture was formed in summer 2023, dealing with local government issues.

5 <https://www.fitchratings.com/research/sovereigns/estonias-new-government-faces-challenges-in-stabilising-debt-18-04-2023>

6 Mäeltsemees, S. (2012), Local government in Estonia. *Local Government in the Member States of the European Union: a comparative legal perspective*, 157-184.

7 Lääne, S., Mäeltsemees, S., & Olle, V. (2021) in Brezovnik, Bostjan, István Hoffman, Jaroslaw Kostrubiec and Jogtudományi Intézet, *Local Self-Government in Europe.*, Lex Localis, 2021.

8 Taluste, O. (2018),. Haldusreformi alused ja õiguslikud valikud. In S. Valner (Ed.), *Haldusreform 2017: Artiklikogumik* (pp. 69–110), Print Best.

have the same legal status, perform similar functions and must provide the same services to their residents. Previously, there had been 213 municipalities. Estonia had been divided into 15 counties, which served as state administrative units. County governments along with county governors were abolished in 2018, and their tasks were transferred to ministries, other government bodies or municipalities from 1 January 2018.⁹ Counties now operate mostly as the co-operation level of municipalities. The 2017 reform also led to a reduction in the number of local council members from 2 951 in 2013 to 1 729 in 2017 and to 1717 in 2021.¹⁰

15. As a result of these reforms, the Local Government Organisation Act (the basic law regulating the activities of local governments, which dates back to 1993) was amended with the latest revised version coming into force on 1 April 2023.¹¹ A wider revision of Local Government Organisation Act was undertaken between 2018 and 2023. A broad-based expert committee led formulation of the revisions which aimed to make the organisation of local governments simpler and more flexible; to resolve contradictions and gaps in the existing system and to make the law framing local government as simple and clear as possible.¹² The draft act was approved by the government and was under discussion in the *Riigikogu* (parliament) but was not passed before the parliamentary elections at the beginning of March 2023. The Coalition Agreement, following the 2023 Parliamentary Elections, contains a commitment to update the Local Government Organisation Act.¹³

2.2 Status of the capital city

16. According to the Article 5 of the Territory of Estonia Administration Act, Tallinn is the capital of Estonia. Tallinn has a population of 446,396 people,¹⁴ which represents around 32.7% of the Estonian population.¹⁵ Unlike many local authorities,¹⁶ it is divided into eight districts each with its own city district assembly. In 2010, Congress monitoring reports advocated special status for the capital city of Tallinn. During the next monitoring in Estonia in 2016, the mayor did not advocate for special status for Tallinn. This particular issue is still pending, as no political agreement has been found. In 2012, Mäeltsemees pointed out that several draft laws for regulating the unique status of Tallinn had been submitted to the Government of the Republic or to the Parliament, but none had been successful.¹⁷ To date, the status of Tallinn has not changed, and the special costs associated with being a capital city are not compensated for by central government, an issue raised by interlocutors from the city's government. During the consultation procedure, the Ministry of Finance indicated that state institutions organise their own events and pay the corresponding bills. They pointed out that if the city of Tallinn gives permission for the event, the covering of costs should also be negotiated.

17. Lääne et al are critical of the failure to address the status of the capital during the reform process, commenting that the Administrative Reform Act did not at all address the issue of the capital region, although nearly half of the Estonian population lives in the area, and more than half of the country's GDP is produced there.¹⁸

18. During the monitoring visit, the representatives of the city of Tallinn expressed the view that there is no need to establish a special capital city status for Tallinn.

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

19. The Republic of Estonia acceded to the Council of Europe on 14 May 1993 and was an early adopter of the Charter. Estonia signed the European Charter of Local Self-Government (ETS No. 122) on 4 November 1993, and ratified it without reservation on 16 December 1994. The Charter entered into force on 1 April 1995.

9 <https://portal.cor.europa.eu/divisionpowers/Pages/Estonia-Introduction.aspx>

10 <https://www.valimised.ee/et/valimiste-arhiiv/kohaliku-omavalitsuse-volikogu-valimised/toimunud-kohaliku-omavalitsuse-volikogu>

11 See https://www.riigiteataja.ee/en/compare_wordings?grupild=100142&vasakAktId=513032023005

12 <https://www.fin.ee/en/state-local-governments-spatial-planning/local-governments/local-government-policy>

13 <https://valitsus.ee/en/coalition-agreement-2023-2027>

14 <https://news.err.ee/1608585331/tallinn-population-shrinks-for-first-time-in-15-years>

15 <https://www.stat.ee/en/find-statistics/statistics-theme/population/>

16 There are also other municipalities, where districts have been formed or at least district assembly has been formed, for example in Pärnu, Saaremaa, Märjamaa, Lääne-Nigula and Hiiumaa.

17 Mäeltsemees, S. (2012), Local government in Estonia. *Local Government in the Member States of the European Union: a comparative legal perspective*, 157-184.

18 Lääne, S., Mäeltsemees, S., & Olle, V. (2021) in Brezovnik, Bostjan, István Hoffman, Jaroslaw Kostrubiec, and Jogtudományi Intézet, *Local Self-Government in Europe*, Lex Localis, 2021.

20. On 16 November 2009 Estonia signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207), which it ratified on 20 April 2011. The Protocol entered into force on 1 June 2012.

21. Article 3 (1) of the Estonian Constitution states that generally recognised principles and rules of international law are an inseparable part of the Estonian legal system. Thus, in principle, the generally recognised principles and rules of international law are directly applicable in the Estonian legal system. During the monitoring visit, it was reiterated that if a conflict emerged between a domestic law and an international treaty ratified by the *Riigikogu*, the provisions of the treaty shall be applied.

2.4 Previous Congress reports and recommendations

22. The Congress has produced several reports and recommendations since Estonia became a member. In 2000 a report on the state of local democracy in Estonia led to Recommendation 81 (2000) on local democracy in Estonia, adopted by the Congress in 2000. In 2010, the Congress adopted the Recommendation 294 (2010) on local democracy in Estonia.

23. The most recent monitoring mission to Estonia was conducted in 2016, the results of which are detailed in the report CPL32(2017)04. The Congress subsequently adopted Recommendation 401 (2017), which asked the Committee of Ministers to recommend that Estonian authorities:

a. clarify their legislation concerning the distribution of mandatory tasks and functions between local government and the State, and transfer a maximum of competences, together with concomitant finances, to the local level. Such measures could complete the government's approach to strengthening local democracy through the merger within larger territorial units;

b. combine as far as possible the functional responsibility of the State for a given competence with the financial responsibility to cover the costs of its implementation, and refrain from using the State reform at agency level as a hidden transfer of responsibilities to local authorities;

c. change the domestic legislation in line with the completion of the territorial reform in order to give local authorities more financial autonomy and diversify the financial system of sources of their revenue by improving the local tax system and enlarging the local share in State taxes;

d. ensure in practice reasonable deadlines and regularity of consultations with local authorities on matters concerning them directly, in the sense of Article 4, paragraph 6, of the Charter. The practice of consultation should be adapted to the need for local authorities to closely follow deliberations, especially those relating to the reform process and on matters relating to local finance;

e. increase the dotation to the equalisation fund, review the criteria for its distribution and develop new vertical and horizontal instruments to improve the Estonian fiscal equalisation system and strengthen local fiscal autonomy.

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

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

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

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

24. Article 2 is concerned with ensuring that the principles of local self-government are enshrined in its legal and/or constitutional system.

25. The principles of local self-government are strongly recognised in both the Estonian Constitution and domestic legislation. Local self-government is mentioned in 26 articles of the Constitution with Chapter XIV (Articles 154–160) specifically regulating the sphere of local government.

26. Article 14 of the Constitution specifies the duty of local government (also the legislature, executive and judiciary) to guarantee rights and freedoms. Article 65 (16) empowers the Riigikogu to address other matters pertaining to the functioning of the state that are not specifically assigned to the President of the Republic, the Government of the Republic, other state bodies, or local governments. Article 79 of the Constitution includes local government among the members of an electoral council which would be established in situations where the President of the Republic is not elected by the *Riigikogu* even in the third round of voting. Thus, local government has a strong constitutional foundation.

27. The most significant domestic legislation includes the Local Government Organisation Act, adopted in 1993 and frequently amended since then, with the latest iteration coming into force on 1 April 2023. It states that local self-government is based on the following principles:

- 1) independent and final resolution of local issues, and organisation thereof;
- 2) mandatory guarantee of everyone's lawful rights and freedoms in the rural municipality or city;
- 3) observance of law in the performance of functions and duties;
- 4) the right of the residents of a rural municipality or city to participate in the exercise of local self-government;
- 5) responsibility for the performance of functions;
- 6) transparency of activities;
- 7) provision of public services under the most favourable terms.¹⁹

28. Other important legislation underpinning local government in Estonia includes:

- The Territory of Estonia Administrative Division Act, which determines the administrative division of the territory of Estonia.
- The Municipal Council Election Act, which elucidates the basis for the election of local government councils.
- The Local Government Financial Management Act of 2010, which regulates the local government budgeting process and outlines measures for ensuring financial discipline at local level.

29. Estonia's Supreme Court has reinforced the significance of the Charter in the country's legal and constitutional framework. Its judgment, in Case 3-4-1-8-09 of 16 March 2010, states that 'the Charter sets out the minimum requirements that the state must keep in mind upon organisation of local self-government, including upon funding local authorities. Therefore, the Court *en banc* finds that the Charter plays an important role in interpreting the provisions of the Constitution concerning the organisation of local self-government'.

30. In the light of the above, the rapporteurs consider that the principles and binding legal effects of the Charter are enshrined in Estonia's Constitution and legislation. Therefore, they conclude that Estonia complies with Article 2 of the Charter.

3.2 Article 3 – Concept of local self-government

Article 3 – Concept of local self-government

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

3.2.1 Article 3.1

31. Article 3, paragraph 1 of the Charter requires an assessment of whether, in law and in practice, local authorities have the right, capacity and opportunity to manage a significant share of public affairs for which they have responsibility and which affairs can be managed in a manner which is appropriate and relevant to the welfare and priorities of the local population.

¹⁹ Local Government Organisation Act–Riigi Teataja

32. Article 154 of the Estonian Constitution states that ‘all local issues shall be decided and organised by municipalities, which shall act independently on the basis of laws. Obligations may be imposed on a municipality only on the basis of a law or by agreement with the municipality’. Accordingly, local government has authority to make and implement decisions on self-governmental tasks and has the right to decide when and how, or whether, to deal with the matters within its competence. So, the *right* ‘to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population’ is explicit for local government in Estonia. But the issue of Estonian local government’s *ability* to manage a substantial share of public affairs under their own responsibility and in the interests of the local population is less clear, mainly due to the financial dimension.

33. The Contemporary Commentary on the Charter asserts that ‘the notion of “ability” expresses the idea that the legal right to regulate and manage certain public affairs must be accompanied by the means of doing so effectively’.²⁰ Interlocutors echoed such beliefs pointing out that freedom to select priorities and manage a substantial share of public affairs under their own responsibility and in the interests of the local population would require significant financial autonomy. However, the obligations on local government often necessitate them using their financial resources to fulfil those obligations. Obligations in the social and educational fields are particularly onerous and command an ever-increasing proportion of local government resources, leaving little for discretionary projects, investment, or future planning.

34. Estonia performs reasonably on the Local Autonomy Index having a medium-high degree of local autonomy (ranking 17th among 39 countries).²¹ However, local government in Estonia scores differently in various dimensions of autonomy. The scores of political and organisational autonomies are the highest possible (100) in Europe, while fiscal autonomy (score 32) and the level of vertical influence of local authorities (score 33) is among the lowest as Figure 1 illustrates. Despite the reform of 2017, the scores remain the same in the composite analysis for 1990-2020 published by the European Commission.²²

Figure 1. Local Autonomy Index scores



Source: Ladner et al.²³

35. Despite the fact that during the monitoring visit, some interlocutors expressed serious concerns about the means to fulfil their responsibilities (concerns that will be examined later in the report), the interlocutors generally agreed that a broad range of responsibilities has been assigned to local government in Estonia, which offers them the “possibility of drawing up and implementing appropriate and relevant local public policies for the benefit of the local population” as detailed in the Contemporary commentary on the Charter.

36. Therefore, the rapporteurs consider that Article 3.1 is complied with in Estonia.

20 Congress of Local and Regional Authorities, A contemporary commentary by the Congress on the Explanatory Report to the European Charter of Local Self-Government. <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149> CG-FORUM(2020)02-05final (page 11)

21 Georg, S., & Kattai, K. (2020), Local government reforms in Estonia: institutional context, intentions and outcomes, *Baltic Region*, 12(1), 32-52.

22 https://ec.europa.eu/regional_policy/sources/policy/analysis/KN-07-22-144-EN-N.pdf

23 Ladner, A., Keuffer, N., Baldersheim, H., Hlepas, N., Swianiewicz, P., Steyvers, K., & Navarro, C. (2019), Patterns of local autonomy in Europe, London, Palgrave Macmillan.

3.2.2 Article 3.2

37. Article 3, paragraph 2 articulates the key democratic principle underpinning the Charter. By declaring that the right of self-government must be exercised by democratically constituted authorities, it confirms that local autonomy does not solely involve the transfer of powers and responsibilities from central to local authorities but also requires local government to transmit and reflect, directly or indirectly, the will of the local population.

38. Article 156 of the Estonian Constitution states that the representative body of a municipality shall be the council, which shall be elected in free elections for a term of four years, and that 'voting shall be secret'. People who reside permanently in the territory of the municipality and have attained sixteen years of age have the right to vote, under conditions prescribed by a law. The size of councils reflects the population with 31 having 7-20 members, 43 having 21-30 members and 5 municipalities having councils with more than 31 members.²⁴

39. The Chairperson (*volikogu esimees*) is the head of the council and is elected by a majority of the council, which also elects a Mayor. The Chairperson manages the work of the council. The council appoints a municipal board (*valitsus*), headed by the Mayor. The local government council may establish both standing and *ad hoc* committees (*alaline/ajutine komisjon*) but the law prescribes only the establishment of an audit committee (*revisjonikomisjon*). The chairpersons of all committees and all members of the audit committee must be elected from among the council.

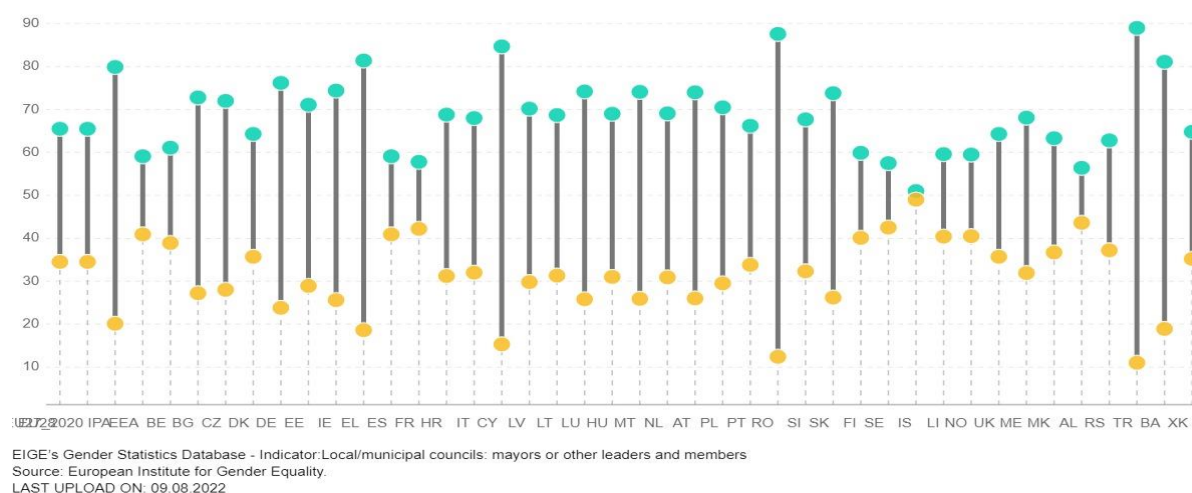
40. For local elections, all those who are at least 16 years of age and are permanent residents of Estonia are allowed to vote (Riigikogu 2002), while Estonian citizens who are 18 or older are allowed to vote in national elections. This means that in addition to the 900,000 or so eligible Estonian citizens, also about 25,000 citizens of other European Union countries, about 70,000 Russian citizens living in the country and 63,000 stateless persons (a significant number of whom are Russians) are also allowed to vote (ERR 2021b).²⁵ Estonian citizens residing abroad (about 10% of the electorate) can vote in all Estonian elections either at an Estonian embassy or online. The amendments to the Referendum Act and the election acts (2021) allow voters to choose the most convenient polling station in their electoral district.

41. There are no legal requirements to ensure gender parity on candidate lists. Women comprise just a quarter of local government elected positions (28.9%), as Figure 2 illustrates.

²⁴ Ministry of Finance, Local Governments in Estonia, available at www.fin.ee/en/media/2260/download

²⁵ Mölder, M. (2022), Estonia: Political Developments and Data in 2021: Reform Party Back in Government, *European Journal of Political Research Political Data Yearbook*, 61(1), 137-146.

Figure 2. Local/municipal councils: mayors or other leaders and members (Gender Statistics Database)



Source: EIGE²⁶

42. There is a strong emphasis on youth participation in Estonia. In 2022, municipal youth councils were active in 76 (out of 79) municipalities.²⁷ Formal consultation involves representatives of youth organisations or umbrella organisations participating in different working groups when sectoral strategies and development plans are being prepared. The Estonian National Youth Council led a project called “Osaluskohvikud” (youth participation cafes) to provide a platform for local politicians, civil servants, professionals working with young people, parents, etc. to meet and discuss various issues with local young people. The Youth Work Act provides a legal framework for youth councils at municipal level. Some interlocutors called for a lowering of the voting age at national level to encourage greater involvement of young people.

43. The Estonian Constitution grants citizens various rights of participation in addition to the specified forms of representative democracy. Article 46 gives citizens the right to address state agencies, municipalities and their officials with letters and petitions. The procedure for responding to such communications must be provided by a law. Article 47 gives the right, without prior permission, to assemble peacefully and to conduct meetings and Article 48 grants the right to form non-profit organisations and association. Municipalities can organize referendums on local issues, but their outcomes are non-binding. According to the Local Government Organisation Act, popular local initiatives signed by at least 1% of the residents of a rural municipality or city with the right to vote (not less than five residents with the right to vote), must be discussed by the local council, or rural municipality or city government (depending on which body's competence the initiative matter belongs to), although this provision is rarely exercised.²⁸

44. Various participatory strategies have been implemented in Estonia to involve citizens in local government. Estonia has launched various information systems in order to share public information online. For example, in 2022, Estonia launched a state database of current spatial plans, which enables citizens to access spatial data over the web.²⁹ In 2023, Estonia will start to develop a state spatial planning procurement system that will enable new participatory methods. In Estonia, local communities or specific urban areas can have elected or appointed representatives – elders to represent them in consultations.³⁰ Some of the municipalities that have been enlarged following the 2017 reform and now combine urban and rural areas use village elders to represent citizens from more remote areas. There are other forms of representative body. As of October 2022, regional representative assemblies (sub-district councils, community assemblies, regional councils etc.) were formed and were functioning in 11

²⁶ https://eige.europa.eu/gender-statistics/dgs/indicator/wmidm_pol_parl_wmid_locpol

²⁷ <https://national-policies.eacea.ec.europa.eu/youthwiki/chapters/estonia/54-young-peoples-participation-in-policy-making>

²⁸ https://www.sgi-network.org/2022/Estonia/Quality_of_Democracy

²⁹ <https://planeeringud.ee/>

³⁰ Akmentina, L. (2022), E-participation and engagement in urban planning: experiences from the Baltic cities, Urban Research & Practice, 1-34.

local governments.³¹ Participatory budgeting is widely used. As of 2023, 50 municipalities in Estonia use a participatory budgeting model for citizen engagement and empowerment.³² Tartu led the way in 2013 whereas Tallinn only implemented its first participatory budgeting process in January 2021. Participatory budgeting initiatives generally focus on creating a better living environment, providing a public space or supporting a cultural event, sporting competition, etc.

45. In Estonia, local self-government is exercised by democratically constituted authorities and both representative and participative democratic processes are in place, enabling citizen participation.

46. Therefore, the Rapporteurs consider that Article 3.2 is complied with.

3.3 Article 4 – Scope of local self-government

Article 4 – Scope of local self-government

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

3.3.1 Article 4.1

47. This paragraph of the Charter requires, in the interests of clarity and legal certainty, that the basic powers and responsibilities of local authorities be stipulated in the constitution or by statute, so as to ensure predictability, continuity and protection for local self-government.

48. Article 14 of the Estonian Constitution lists local government among the institutions whose responsibilities include ‘guaranteeing rights and liberties’. The Constitution also states very clearly that ‘all local issues shall be decided and organised by municipalities, which shall act independently on the basis of laws’ (Article 154). Furthermore, this article states that obligations may be imposed on a municipality only on the basis of a law or by agreement with the municipality.

49. The tasks of local authorities in Estonia are enshrined in the 1993 Local Government Organisation Act (and subsequent amendments). These tasks are more specifically regulated by at least two hundred acts and regulations. Among the mandatory tasks are:

- to organise the provision of social services in the local government;
- to grant social benefits and provide other social assistance;³³
- to organise welfare services for the elderly, cultural, sports and youth work;
- to organise housing and utilities, the supply of water and sewerage, the provision of public services and amenities, waste management, spatial planning, public transportation within the rural municipality or city, and the construction and maintenance of rural municipality roads and city streets unless these tasks have been assigned to other persons by law (Article 6(1)).

50. Article 6(2) obliges municipalities to organise the maintenance of pre-school child care institutions, basic schools, secondary schools, hobby schools, libraries, community centres, museums, sports facilities, shelters, care homes, health care institutions and other local agencies if such agencies are owned by the local government. In accordance with Article 6(3), local government also performs and organises the performance of tasks assigned to them by other laws. Thus, the powers and responsibilities of local government have clear constitutional and legal foundations.

³¹ <https://fin.ee/media/7835/download>

³² <https://fin.ee/media/2539/download>

³³ Article 6 (2¹) of the Act: “At the time of increased defence readiness, state of war, mobilisation or demobilisation, the local authority shall organise, in addition to the functions provided for in subsections 1 and 2 of this section, the social welfare of the families of victims of military action and persons occupying war-time positions of military rank and contribute to the evacuation of persons and the provision of accommodation, catering and medical care to evacuees.”

51. Therefore, the rapporteurs consider that Article 4.1 is complied with in Estonia.

3.3.2 Article 4.2

52. Article 4, paragraph 2, decrees that local authorities must have the right to exercise their initiative on matters not explicitly excluded from their competence by law. It also articulates the need for 'full discretion to exercise their initiative', thereby denouncing any restrictions on local authorities' discretion which might arise from management, fiscal or budgeting rules that require a sound legal basis for spending.

53. The Estonian Constitution (Article 154) distinguishes between 'local issues' and national tasks i.e., 'obligations of the state imposed by the law on a municipality'. This implies that local government has general authority to decide and administer issues of local life without needing special authorisation. Judgments from the Supreme Court reinforce the right of local governments to resolve and manage local issues independently, declaring that 'the principle of local government autonomy exists in the interests of decentralising public authority and restricting and balancing the authority of the state'.³⁴ Thus, the autonomy of local government is upheld constitutionally and legally.

54. Interlocutors pointed out that there are areas where, in the public interest, the state has found it necessary to specify in detailed laws the conditions and procedure for the exercise of specific competences. Thus, the extent of the discretion of local authorities depends on the specific sphere. The Ministry of Finance asserts that there are few spheres where the state sets standards so local authorities are perceived to have flexibility. Some interlocutors assert that Article 154 is frequently not observed because the expenses related to performing government tasks imposed on municipalities are not fully covered from the state budget because the full costs had not been anticipated, particularly in the social care sphere. Such shortfalls limit the optional spending of municipalities and are perceived by them to limit their 'full discretion to exercise their initiative'. During the monitoring visit, the rapporteurs were nonetheless informed of a number of areas where local authorities had initiated innovative actions, showing that local governments have "full discretion to exercise their initiative". These initiatives aimed, for example, to tackle climate change or to facilitate reception of Ukrainian refugees.

55. Notwithstanding the resource challenges, the rapporteurs consider that Article 4.2 is respected in Estonia.

3.3.3 Article 4.3

56. This Article underpins the principle of subsidiarity which aims to ensure that decisions are made at the most appropriate level. The Charter urges the execution of public responsibilities at the level closest to citizens. This principle is perceived in the Contemporary Commentary as 'vitaly important for the protection of local authorities against trends towards upscaling and re-centralisation that threaten to render local self-government meaningless'.

57. By confirming that 'all local issues shall be decided and organised by municipalities, which shall act independently on the basis of laws' in Article 154, the Estonian Constitution enshrines the principle of subsidiarity. Estonia's Supreme Court refers to the principle of subsidiarity and points to its position in Estonia's legal order as originating from Article 4.3 of the European Charter of Local Self-Government and indicates that 'a concrete function is fulfilled by the level of power which in the concrete situation is in the best position to do it'. Clearly, the principle of subsidiarity is recognised constitutionally and legally in Estonia.

58. In practice there can sometimes be ambiguity about where responsibilities for specific competences lie. Interlocutors referred to disputes which have arisen between local governments and the state as to where competence belongs e.g., in matters of territorial planning. Prior to the 2023 elections, amendments to the Local Government Organisation Act, which sought to define more precisely which tasks are national and which are local were prepared but not adopted by the *Riigikogu*. The new government plans to continue with the discussions on the revision of the Local Government Organisation Act. The Coalition Agreement, following the 2023 Parliamentary Elections, contains a clear commitment pledging that 'in the course of updating the *Local Government Organisation Act* and the *Local Government Financial Management Act* we will review the division and funding of tasks

³⁴ Constitutional judgment 3-4-1-1-05, available on the website of the Estonian Supreme Court (<https://www.riigikohus.ee>)

between local governments and the central government³⁵. The Supreme Court in its judgments, (e.g., case 5-21-18) has also reiterated the significance of subsidiarity.

59. For these reasons, the rapporteurs consider that Article 4.3 is complied with in Estonia.

3.3.4 Article 4.4

60. Compliance with Article 4.4 requires that limitations on the powers given to local government should be exceptional, and should be based on objective reasons and interpreted narrowly. This provision also discourages the overlapping of responsibilities between levels of government.

61. From a legal and constitutional perspective, as noted with reference to Article 4.2, the powers of municipalities in Estonia are full and exclusive. In practice, however, the dependence on national funding, the incidence of cases where state funding is not sufficient to fully finance mandated tasks, the lack of clarity regarding some competences and the limited own resources of municipalities present challenges which impede local government from implementing their powers fully and exclusively.

62. Following the 2017 reform and the termination of county governance, municipalities have been legally assigned new functions for joint implementation. Pursuant to law, the local authorities in each county must jointly plan and implement the development of the county. Coordination of security councils, health promotion and organisation of culture are now also joint functions of local authorities. One of the joint functions of local governments since 2018 has been the organisation of public transport (bus and ferry traffic) in counties in cooperation with the national Road Administration (since 2021 Transportation Administration) via the regional transport centres formed for this purpose. As an exception, local public transport in Saaremaa and Hiiumaa is organised by the local authorities themselves.³⁶ No evaluation of the impact of this change on the powers of municipalities has yet taken place.

63. Many interlocutors called for greater clarification of the respective areas of competence. Ministerial interlocutors referred to discussions about whether more tasks could be applied to local governments with appropriate funding and taking a 15-year perspective in order to increase the subsidiarity and decision-making scope of local governments. Such developments would be appropriate.

64. In the light of the above, the rapporteurs consider that Article 4.4 is complied with in Estonia.

3.3.5 Article 4.5

65. The Contemporary Commentary affirms that Article 4, paragraph 5, aims at protecting local authorities as decision-makers and ensuring that that, insofar as possible, local authorities have discretion to adapt the exercise of their delegated powers to local conditions. Such discretion ensures that they are not merely acting as agents of higher-level authorities.

66. Local government in Estonia does have discretion to adapt the exercise of powers (for own and delegated competences) to local conditions. National level interlocutors pointed out that there are very few instances where the state has set service standards so local governments have flexibility to tailor services to local needs. Local level interlocutors referred to differing levels of discretion in different spheres of competence.

67. Therefore, the rapporteurs are satisfied that the requirements of Article 4.5 are being met in Estonia.

3.3.6 Article 4.6

68. Through Article 4, paragraph 6, the Charter introduces a procedural requirement for timely and appropriate consultation of local authorities. This implies that local authorities should be able to obtain full information on proposals, decisions and policies that concern them directly, that local authorities should have the opportunity to feed into the policy-making process before decisions and policies become legally binding and that local authorities should have the time and ability to formulate and present their perspective. As the Contemporary Commentary asserts, this principle aims to ensure the

35 <https://valitsus.ee/en/coalition-agreement-2023-2027>

36 <https://minuomavalitsus.ee/en/methodology/responsibilities-local-governments>

genuine participation of local stakeholders in decision-making of the entities having power to define the rights of local authorities.

69. According to the Rules of the Government of the Estonian Republic, a draft regulation of the minister, draft legislation or any other question pertaining to the rights, obligations, tasks of the local government or the organisation of local life, must be coordinated with the national association of local governments before submission to the relevant minister or the Government. Section 46 of the State Budget Act establishes specific procedures with regard to consultation on the budget. The consultation involves negotiation on various aspects of the state budget, including the principles of distribution, conditions of use, principles of formation of amount, and the amounts of support for the budget strategy period and budgetary year. In recent years new working groups have been added to the yearly budget negotiation process with the Association of Estonian Cities and Municipalities – 1) local level ICT; 2) integration; 3) spatial planning, housing and land; and 4) security and crisis preparedness. The head of the Local Government Policy Department and the head of the Local Government Financial Management Department of the Ministry have monthly meetings with the director and deputy directors of the Association of Estonian Cities and Municipalities. Further expansion of consultation processes is evidenced by the recent introduction by the central authorities of monthly meetings with all the rural municipality and city mayors and the half-yearly meetings with the rural municipality and city secretaries initiated by the Ministry of Finance. During the consultation procedure, the rapporteurs were informed that these monthly meetings had been organised by previous minister and may not continue. Additionally, the rapporteurs received information that the competent Minister has had many *ad hoc* meetings with municipalities.

70. The involvement of stakeholders by the *Riigikogu* into legislative proceedings is regulated by the *Riigikogu* Rules of Procedure and Internal Rules Act. Representatives of state agencies and other persons may participate in *Riigikogu* Committee sittings at the invitation of the Chairperson of the Committee and local government representatives are frequently invited to do so. Committees of the *Riigikogu* such as the Constitutional Committee, the State Budget Control Select Committee and the Committee of Rural Affairs have met with local government representatives to discuss issues affecting local government.

71. Thus, processes and requirements for consultation with local government have been specified and are being implemented. During the consultation procedure, the Ministry of Finance indicated that the consultations on 2017 reform were comprehensive. However, some interlocutors criticised the nature and timing of many of the consultations, citing a reform of the welfare system when a two-day turnaround was the timeframe given for comments on draft legislation. Criticisms of the consultation process had also been made in the lead up to the 2017 reform. The Ministry of Finance indicated that the constitutional review in Supreme Court decided that the reform was in accordance with the Constitution and other legislative acts and had not revealed contradictions in the consultation process. Interlocutors were also critical of the fact that the authors of various draft acts may not have properly analysed their potential impact, such as the social consequences, impact on local budgets, development issues, organisation of work etc. This was the case when an increase in teachers' salaries was awarded by central government but the knock-on impact where municipalities had to increase kindergarten teachers' salaries in order to retain them had not been foreseen at central level. In many such instances earlier consultation and involvement of local government could have avoided or reduced such problems.

72. The Contemporary Commentary of the Charter argues that by including the wording “due time”, the Charter seeks to ensure that the form and timing of consultations are such that local authorities have the possibility of influencing the decision-making process and avoid situations where the right of local authorities to be consulted is overridden on such pretexts as urgency and cost-saving.³⁷ While the timeframe of the consultation process in Estonia is often rushed, consultations are held at the preparatory stage of drafting decisions, policies and legislation and the AECM (Association of Estonian Cities and Municipalities) is involved in many consultative processes. Yet, the exhortations of the CLRAE have not been fully responded to. In its Recommendation 328 (2012) on the right of local authorities to be consulted by other levels of government, the Congress stressed that local authorities should have an active role in adopting the decisions on all matters that concern them and, in a manner, and timing such that they have a real opportunity to formulate and articulate their own views and proposals in order to exercise influence. The Congress also asked member States to specify the format of consultations; to provide proper, clear and detailed information in writing well before the consultation;

³⁷ Contemporary Commentary, paragraph 78.

to involve local government expertise in drafting policies and legislation; to carefully analyse the implications of strategically important decisions; to make public the results of consultations; and to recognise the right of local authorities to petition and to redress when consultation procedures have not been properly conducted. These exhortations are responded to inconsistently in Estonia and the consultation processes could be more meaningful and fulsome.

73. Therefore, the rapporteurs consider that Article 4.6 is partially complied with.

3.4 Article 5 – Protection of local authority boundaries

Article 5 – Protection of local authority boundaries

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

74. Article 5 of the Charter states that changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute. Thus, Charter does introduce procedural rules for changes in local authority boundaries. According to the Contemporary Commentary 'it is therefore a mandatory procedural requirement that no change in local boundaries may be adopted without consultation, which must take place at a timely stage before a final decision on the matter is made'.³⁸ The Commentary (paragraph 94) clarifies that consultation in accordance with the Charter does not rule out obligatory mergers or boundary changes, but that the procedures must be laid down by law.

75. Article 158 of the Estonian Constitution states that 'the boundaries of municipalities shall not be altered without hearing the opinion of the municipalities concerned'. This stricture is implemented.

76. The Territory of Estonia Administrative Division Act provides for the administrative division of the territory of Estonia, the alteration of administrative-territorial organisation and the basis and procedure for the alteration of boundaries and changes to the names of administrative units. According to the Local Government Organisation Act, 'a local government shall not be liquidated and its boundaries or name shall not be altered without hearing the opinion of the council of the rural municipality or city (1.16). During the consultation procedure, the rapporteurs were informed that according to the Territory of Estonia Administrative Division Act § 7 (7), "upon the alteration of administrative-territorial organisation and boundaries of an administrative unit, the opinion of the residents of the relevant local authority with regard to the alteration of administrative-territorial organisation and boundaries of the administrative unit shall be determined by polling. The opinion shall be asked from residents who have attained at least 16 years of age by the time of the residents' poll, who reside permanently in the territory of the relevant local authority and the address details of whose residence have been entered in the Estonian population register, taking account of the following principles: 1) in case of alteration of administrative-territorial organisation, the opinion of the residents is obtained in all local authorities concerned; 2) in case of assignment of a territorial area belonging to one administrative unit to another administrative unit, the opinion of the residents is obtained in the territorial area concerned by settlement unit; 3) in case of alteration of the boundaries of the administrative unit according to land readjustment, building and planning needs, the opinion of the residents is generally not obtained; if necessary, only the opinion of the residents concerned is obtained; 4) the opinion of the owners of immovables and owners of dwellings as movables located within the territory of the rural municipality or city who are not residents of such rural municipality or city may also be determined." Lääne et al. point out that carrying out an opinion poll is obligatory if redrawing the boundaries of the local government is being considered. The results of such polls, however, are only of an advisory nature.³⁹

77. The issue of local authority boundaries was significant during the lead up to the 2017 reforms. The Coalition agreement of 2015 included the aim of local government reform to achieve well-functioning and capable local government.⁴⁰ Prior to the 2017 reforms, a long review process took place, involving deliberations, policy analysis and reports. The Administrative Reform Act requiring mergers was adopted in 2016 and came into force in 2017. The number of residents was taken as the basis for merging local governments since it was asserted that the revenue base, the capacity to offer services, and the investment capability of a local government are contingent on the number of residents.⁴¹ The

³⁸ Contemporary Commentary, paragraph 90

³⁹ Lääne, S., Mäeltsemees, S., & Olle, V. (2021), *Local Self-Government in Estonia*.

⁴⁰ https://4liberty.eu/wp-content/uploads/2018/11/ARTO-AAS_LOCAL-GOVERNMENT-REFORM-IN-ESTONIA.pdf

⁴¹ *ibid*

key goal was to create local governments with the minimum size of 5,000 inhabitants, with a preference for municipalities with 11,000 residents. If voluntary mergers could not be agreed within a specified timeframe, then central government would initiate compulsory mergers. About 80 % of the small municipalities merged with a municipality with which they shared a border. The terms and conditions of the merger were established in the merger agreements, which remained in force for four years. Despite significant financial incentives for mergers, some municipalities resisted, and a number of legal proceedings were brought, questioning the constitutionality of the Act. The Constitutional Review Chamber of the Supreme Court decided that the government-initiated mergers were in accordance with the Constitution and other legislative acts.⁴² Central government forced a number of mergers.⁴³ Nevertheless, since local authorities were given an opportunity to select merger partners themselves, this was not regarded as unconstitutional in the Supreme Court judgement.

78. Therefore, the rapporteurs consider that Article 5 is complied with in Estonia.

3.5 Article 6 – Appropriate administrative structures and resources

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

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

3.5.1 Article 6.1

79. This provision aims to safeguard local autonomy by ensuring that *local authorities can* put in place administrative structures and arrangements appropriate to the needs of their citizens and which enable them to provide a full range of public services. The Contemporary Commentary advocates that the power of local entities to organise their affairs should be exercised with due respect for the generally accepted principles of effective and efficient governance while meeting collective needs and expectations.

80. The Estonian Constitution decrees in Section 154 that ‘all local issues shall be resolved and managed by local governments, which shall operate independently pursuant to law’. Accordingly, local governments in Estonia may adapt their structures and processes to meet local needs. The organisational structure of a municipal administration is determined by the municipal council.⁴⁴ Municipal staff are employed by the mayor and must include the position of a city or rural municipality secretary (*linnasekretär, vallasekretär*) who is the head of the office. In 2021, just 2.9% of the Estonian working-age population (aged 15-74) worked in the public service, with over a quarter of them working in local government.⁴⁵

81. Local authorities are free to manage their human resources and set salaries, but the resource-base of the authority limits their expenditure. One of the outcomes of the 2017 reform is increased specialisation among officials in the new merged structures. By increasing the resource base of the municipalities, the reform enabled the raising of salaries to a level which made it possible ‘to hire competent specialists and avoid “brain drain” from the regions.’⁴⁶ Interlocutors informed the delegation that local authorities face great difficulty in finding public servants with the necessary skills on the labour market and paying them market wages. On the one hand, they see that these problems are again linked to insufficient financial resources, but on the other hand, it is not possible to find competent staff in certain areas.

82. The Ministry of Finance together with a broad-based expert committee (including representatives from the Association of Estonian Cities and Municipalities) had prepared a Bill proposing revisions to the Local Government Organisation Act. The revisions contained in the Bill (which was set aside because of the 2023 election) had as their goal ‘to enable local governments to have a greater right to self-organisation - to increase the internal right of self-organisation of local governments, to make the

42 Ibid.

43 Mergers initiated by the Government of the Republic (fin.ee)

44 Ministry of Finance, *Local Governments in Estonia*, available at www.fin.ee/en/media/2260/download

45 <https://www.fin.ee/en/state-local-governments-spatial-planning/public-administration-and-personnel-policy/public>

46 https://4liberty.eu/wp-content/uploads/2018/11/ARTO-AAS_LOCAL-GOVERNMENT-REFORM-IN-ESTONIA.pdf

organisation of local governments simpler and more flexible'.⁴⁷ The new government has pledged to reform the Act so there are likely to be further changes.

83. Furthermore, during the monitoring visit, no issues regarding this provision have been raised by interlocutors.

84. Therefore, the rapporteurs consider that Article 6.1 is respected in Estonia.

3.5.2 Article 6.2

85. Article 6 paragraph 2 is concerned with the organisational and institutional autonomy of local government, asserting indicating that local authorities should have discretion regarding recruitment of personnel and the freedom to determine the conditions of service of their employees. The Contemporary Commentary on the Charter (paragraph 106) urges that local authority employees should be entitled to training opportunities, remuneration and career opportunities similar to employees at other levels of government.

86. The general laws and regulations on the civil service in Estonia allow local authorities the discretion and the freedom to determine the conditions of employment of their own employees. Section 14 of the Civil Service Act states that 'the requirements for education, work experience, knowledge and skills of the officials of a local government authority, which are necessary for the performance of functions, shall be established by the local government council'. Section 18(7) states that 'the procedure for recruitment and selection of officials of a local government authority shall be established by the municipal or city government'. Section 31 (7) of the Act states that 'the training of officials of a local government authority shall be established by a municipal or city government'.

87. As indicated with regard to Article 6, Paragraph 1, the 2017 reform increased the size and staffing of local authorities, thereby increasing the career opportunities and making employment in the sector more attractive, as indicated by some interlocutors during the monitoring visit.

88. A recent monitoring review of the reform⁴⁸ shows that the merged authorities can now recruit specialists to handle spheres of action that previously were not prioritised, either because of the lack of employees or the small size of the target group needing the particular service. Such specialists include IT-managers, asset management specialists, controllers and/or supervisory officers, human resource specialists, PR and communication managers. The number of positions for development and environmental protection specialists has also increased. The review states that in the field of child protection and other social fields, specialisations have taken place, where, in addition to universal social advisors or specialists, the level of management has been differentiated and positions with more specific profiles have been introduced.

89. The review also determines that the merged local governments have been able to increase the competitiveness of their officials' wages in relation to the national average salary compared to the pre-merger level. The average gross monthly salary in local government authorities in 2021 was 1,652€ (showing an increase of 4.0%) compared with an average of 1,900€ in state authorities.⁴⁹ Interlocutors mentioned that narrowing the gap is important in attracting people to the sector.

90. Estonia's legal system gives local government organisational and institutional autonomy with regard to the recruitment and development of staff. The reform drive has created a climate which values and facilitates skill-building and training for local government employees. In line with the interpretation of the Contemporary Commentary, Estonian authorities enjoy autonomy in the field of human resources and have discretion to decide on the remuneration of their staff according to the principles set out by national government.

91. In the light of the above, the rapporteurs conclude that Article 6.2 is complied with in Estonia.

⁴⁷ Communication from Ministry of Regional Affairs, May 2023.

⁴⁸ <https://fin.ee/riik-ja-omavalitsused-planeeringud/kohalikud-omavalitsused/haldusreform-2015-2017#haldusreformi-seierer>

⁴⁹ <https://www.fin.ee/en/news/solman-crisis-years-have-particularly-clearly-shown-professionalism-our-public-service>

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

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

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

3.6.1 Article 7.1

92. The provision anchored in Article 7 paragraph 1 seeks to ensure that citizens are free to serve as elected representatives and are not prevented from holding political office owing to financial or material considerations and that, local councillors should not be prevented from discharging their duties. The Contemporary Commentary interprets Article 7.1 as providing that each local authority shall be able to take its “own discretionary decisions“ concerning the precise conditions of office that apply to elected representatives within its jurisdiction.

93. In Estonia, Section 17 of *the Local Government Organisation Act* states that ‘council members shall operate pursuant to law, rural municipality or city legislation and the needs and interests of the residents of the rural municipality or city’. The Act also includes a number of provisions for termination of the authority of a municipal council member in specified circumstances. e.g., s/he is appointed as an official of the same council. Such provisions are not perceived as restricting the free exercise of the functions of local elected representatives. Local authorities make discretionary decisions concerning the conditions of office that apply to elected representatives. Pursuant to law an employer is obliged to allow a municipal council member to participate in municipal council sessions and meetings of municipal council committees and to perform tasks assigned to the municipal council member by the municipal council. This provision facilitates exercise of the councillors’ functions. However, the Act does not state explicitly that a municipal council member has to be released from work to engage with the electorate, e.g., to attend meetings (other than council meetings), participate in training and discussions etc. Elected council members have the right to obtain copies of legislation, documentation and other information about the municipal council and municipal administration.

94. Interlocutors did not raise any negative issues concerning the conditions of office of local elected representatives during the monitoring visit.

95. Therefore, the rapporteurs conclude that Article 7.1 is respected in Estonia.

3.6.2 Article 7.2

96. Article 7 paragraph 2 of the Charter aims to ensure that local elected representatives receive appropriate financial compensation and to avoid situations where the conditions of office might prevent, limit, or exclude potential local candidates from standing for office due to financial considerations. Article 7.2 is also concerned with ensuring that elected representatives receive appropriate compensation and remuneration so that they are not at a financial loss due to their public role.

97. Elected representatives in Estonia are not prevented from holding political office owing to financial or material considerations. Municipal councils in Estonia have the right to pay remuneration to their members for participation in the work of the municipal councils and compensation for expenses incurred in the performance of tasks assigned to them by the municipal councils. Section 22 (1) (22) of the Local Government Organisation Act provides that the remuneration to be paid to council members for council work and the establishment of a procedure for reimbursing the expenses incurred in the performance of council work fall within the exclusive powers of the local council. In situations where somebody is a member of the European Parliament or member of the *Riigikogu* at the same time as being an elected member of a local council, that person shall be paid no remuneration for participation in the work of the municipal council.

98. The positions of the chairperson of the municipal council and one deputy chairperson may be remunerated, based on a resolution of the municipal council which specifies the amount payable. If they hold a dual mandate, they shall not be remunerated for the performance of the duties of the chairman or deputy chairperson of the municipal council.

99. Paragraph 113 of the Contemporary Commentary advocates 'that local bodies should provide adequate remuneration for work done by elected representatives and that remuneration should realistically reflect the workload of their office'. No special concerns were raised by interlocutors concerning remuneration during the monitoring visit.

100. Therefore, the rapporteurs are satisfied that Article 7.2 is complied with in Estonia.

3.6.3 Article 7.3

101. This paragraph focuses on functions and activities that could be incompatible with the position of an elected councillor. It deals with compatibility between the holding of a representative position at local level and other activities, either public or private, establishing that the "functions" and "activities" that cannot be made compatible with holding a local position once the candidate has been elected shall be determined by statute or fundamental legal principles. Paragraph 120 of the Contemporary Commentary urges that restrictions on holding elected office should be as limited as possible. The Contemporary Commentary (paragraph 122) perceives this paragraph as serving to discourage the simultaneous holding of more than one political mandate, a practice that is currently permitted in Estonia.

102. In Estonia, the Local Government Organisation Act clearly articulates circumstances which are incompatible with the position of an elected councillor or mayor and in which the elected member must inform the council. This may lead to suspension of the member. i.e., the temporary release of the municipal council member from the performance of the functions of a municipal council member, or premature termination of their authority.

103. Section 49 (2) of the Local Government Organisation Act states that 'the rural municipality or city mayor shall immediately inform the municipal council in writing if he or she acts or intends to act outside his or her official duties based on a contract of employment or contract for provision of services or in a position of another local government, as an undertaking or a general partner in a general or limited partnership or a member of the management or controlling body of a legal person'. A later subsection states that 'the municipal council prohibits the rural municipality or city mayor by an administrative act from engaging in full or in part in the ancillary activities specified in subsection 2 of this section, if the volume of labour spent on the ancillary activities or the nature thereof hinders regular performance of his or her duties or if the ancillary activity brings about a breach of duties'.

104. Although there was controversy about the issue of dual mandates during the reform process,⁵⁰ a 2016 law abolished the earlier prohibition on combining positions of a parliament member and a local council member. Subsequently, four rural municipality councils filed a complaint with the Supreme Court maintaining that the law contradicts the local governments' right of self-governance arising from Article 154 (1) of the Constitution and, in essence, also the principle of separation and balance of powers arising from Article 4 of the Constitution as well as the principle of incompatibility of the position of a parliament member and that of officials of other government agencies arising from Article 63 of the Constitution. The Constitutional Review Chamber of the Supreme Court found that the Acts amending the Status of Members of the *Riigikogu* Act and the Local Government Organisation Act were not in conflict with the requirements of the Constitution set out in the petitions of the local councils, and the Chamber rejected the complaint. Since then, according to Article 72 of the Local Government Organisation Act, councillors in Estonia may be members of the *Riigikogu* (since 2017) or members of the European Parliament (since 2021) at the same time as being an elected member of a local council. A politician holding a dual mandate was among those interviewed by the monitoring team.

105. Various legal decrees determine functions and activities which are deemed incompatible with the holding of local elective office in Estonia. During the monitoring visit, no specific concerns were raised by interlocutors.

106. Therefore, the rapporteurs consider that Article 7.3 is complied with in Estonia.

⁵⁰ CPL32(2017)04final, *Local Democracy in Estonia*, paragraph 100.

3.7 Article 8 – Administrative supervision of local authorities' activities

Article 8 – Administrative supervision of local authorities' activities

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

3.7.1 Article 8.1

107. This paragraph links the legality principle into the supervision of local authorities by insisting that any administrative supervision of the activities of local authorities must be exercised according to such procedures and in such cases as are provided for by the constitution or by statute. This provision rules out *ad hoc* supervisory procedures. It also means, as stated in paragraph 128 of the Commentary that supervisory authorities must strictly comply with the procedures established by law for the exercise of such supervision.

108. Article 160 of the Estonian Constitution declares that the administration of local governments and the supervision of their activities shall be provided by law. Details are set out in sections 66 and 66.1 of the Local Government Organisation Act which clarifies the supervisory role of various state bodies as follows: 'The Ministry of Justice exercises supervision over the activities of a local authority pursuant to the procedure provided by law. The National Audit Office inspects the activities of a local authority pursuant to the National Audit Office Act. The Chancellor of Justice exercises supervision over the conformity of the legislation of general application of rural municipalities and cities with the Constitution of the Republic of Estonia and law'.

109. Accordingly, there are three main forms of supervision of municipalities, legal, administrative and financial oversight. Article 157 of Estonia's Constitution states that municipalities shall have independent budgets for which the bases and procedure for formation shall be provided by law. This results in certain processes for financial supervision of municipalities. Rules for financial supervision are provided in the Local Government Financial Management Act while the National Audit Office exercises control over the municipal use of state and municipal assets.

110. There are also processes for administrative and legal supervision of local government activities. Administrative supervision is exercised by various ministries, executive agencies and inspectorates, e.g., the Language Inspectorate, Competition Authority, Data Protection Inspectorate, and the Labour Inspectorate. Some sectoral supervision also occurs such as participation of the state in certain spatial planning proceedings.⁵¹ Pursuant to the Government of the Republic Act, the Ministry of Justice exercises control over the lawfulness of local government administrative acts. The Chancellor of Justice ensures that legislation by local authorities and their activities are in conformity with the Constitution and laws, and they are following good administrative practice.

111. These constitutional and legal provisions ensure an adequate legislative basis for supervision of local government in the country.

112. Therefore, the rapporteurs conclude that Article 8.1 is complied with in Estonia.

3.7.2 Article 8.2

113. Article 8.2 clarifies the principles and parameters of administrative supervision which may consist of checks on legality or checks on expediency. According to paragraph 132 of the Contemporary Commentary, the Charter proclaims a general preference for checks on legality over checks on expediency. The latter (expediency control) can only be used in the case of delegated tasks.

114. The supervision of local authorities in Estonia is focussed on ensuring compliance with the law and constitutional principles. The Chancellor of Justice reviews the acts of general application of local self-government for conformity with the Constitution and the laws of the Republic of Estonia (§ 139

⁵¹ Ministry of Finance, *Local Governments in Estonia*, available at www.fin.ee/en/media/2260/download

section 1 of the Constitution; § 1 section 1 of the Chancellor of Justice Act). Furthermore, the Chancellor of Justice, as an ombudsman, verifies whether the principle of good administration, which includes broader values (as mentioned in Article 14 of the Constitution), is observed. The Chancellor of Justice may provide criticism, suggestions and express their opinion but viewpoints of the Chancellor of Justice are not mandatory for agencies under supervision to comply with. Also, the Chancellor of Justice does not have the competence to invalidate the acts of agencies under supervision, and s/he does not have a direct possibility to use coercive measures (punishment, fine, application of non-compliance levy).

115. The National Audit Office or NAO can check whether the accounting in the local authorities is in order, the internal control systems are functioning, the activities are legal, and the computer systems are reliable, but the National Audit Office does not perform a direct financial audit of accounts in local authorities. Neither can the National Audit Office assess whether the actions of the local government in dealing with municipal property have been expedient. When checking the use of property and money by local authorities, the competence of the National Audit Office is limited to checking regularity. When checking the use of money for the performance of national tasks handed over to a local government, the National Audit Office has the right to assess the effectiveness of the use of money. As the NAO website states,⁵² 'the National Audit Office is not interested merely in the formal compliance of the activities with laws, but just as much the fact whether the laws and the government's actions are sufficient to ensure purposeful and advisable use of funds and whether reports give an adequate picture of the spending and successfulness'.

116. Supervision over the acts of local authorities is carried out by the state in Estonia and it is chiefly limited to a control of legality with the National Audit Office having, in limited spheres, the right to assess the effectiveness of the use of money. No issues regarding supervision were raised by interlocutors.

117. In the light of the above, the situation in Estonia is in compliance with Article 8.2 of the Charter.

3.7.3 Article 8.3

118. This paragraph is concerned with the practice of administrative supervision and requires compliance with the principle of proportionality. Under the principle of proportionality, the regional or central body should intervene only to the extent necessary, taking into account the relevance of the interests which the intervention seeks to protect.

119. The legal supervision of local authorities in Estonia is proportionate, concerned as is with upholding far-reaching principles affecting the public interest. Administrative supervision is also perceived as proportionate and sector-specific. The Supreme Court⁵³ has aligned its approach to the Charter stating that 'to preserve the essence of the local governments' right to self-organisation the restriction thereof must be proportional, i.e. suitable for achievement of the desired aim, necessary and reasonable. The same requirement concerning administrative control is expressed in Article 8(3) of the Charter'. The aim of the National Audit Office's supervision is to ensure the legality of local authorities' activities, the lawful use of public funds and prevention of the risk of corruption. With regard to state assets, the additional aim of the NAO is to guarantee the purposeful and economic use of these assets. These aims are in conformity with Article 8.3 of the Charter.

120. Therefore, the rapporteurs consider that Article 8.3 is complied with in Estonia.

3.8 Article 9 – Financial resources

Article 9 – Financial resources of local authorities

1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources

52 <https://www.riigikontroll.ee/Riigikontrollkuiasutus/tabid/106/language/en-US/Default.aspx>

53 <https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-17-08>

- of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
 7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
 8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

3.8.1 Article 9.1

121. The Contemporary Commentary on the Charter stresses that Article 9.1 establishes the right of local authorities to have their own resources and the freedom to spend them according to their own judgment. Accordingly, states are expected to ensure that local authorities have the legal, budgetary, and fiscal capacity to make use of these rights and implement their policies.

122. The issue of resourcing local government is a contentious topic in Estonia, particularly regarding the adequacy of funding and the degree of financial autonomy which local government possesses. The Contemporary Commentary points out that Article 9.1 articulates two important financial principles, namely, that local authorities should have their *own* financial resources and that they should be free to decide how to spend those resources. Accordingly, states must ensure that local authorities have the legal, budgetary, and fiscal capacity to make use of these rights and implement the policies they adopt. As stated by the Contemporary Commentary, the wording “adequate financial resources” requires measures “to ensure proportionality between mandatory functions of local authorities and the funding available”.

123. Article 157 of the Estonian Constitution decrees that municipalities shall have independent budgets for which the bases and procedure for formation shall be provided by a law. Consequently, local government councils approve the annual budget, which is prepared on an accrual basis. Local governments must prepare development plans and adopt a budget strategy for a minimum period of four years. The *Local Government Financial Management Act* provides the principles of preparation, adoption, implementation and reporting of local government budgets.

124. Local government in Estonia carries out both own and delegated competencies. A Supreme Court judgment⁵⁴ categorises local government functions as ‘local government functions arising from the law (also ‘mandatory local government functions’) and other functions (also ‘voluntary local government functions’), the fulfilment of which is not prescribed by law’. Irrespective of their size or income, local governments perform similar functions and offer the same services to their citizens. However, demography, geography and socio-economic factors affect the financial capability of each municipality.

125. Local governments receive support from the state budget. One type of support is the equalisation fund, which supplements the income of municipalities with a small revenue base. The equalisation fund comes entirely from the state budget and is calculated using a formula. Another type of formula-based support is the support fund, which consists of sectoral support for specific purposes (e.g., support for teachers' labour costs, hobby group support, support for social services, road maintenance support, etc.). Waste management and the provision of social assistance were transferred from the support fund into the revenue base of local government and other tasks will be reassigned in 2024. Project-based support is also provided from the state budget, for example, for investments (e.g., the European Union's structural funds).⁵⁵

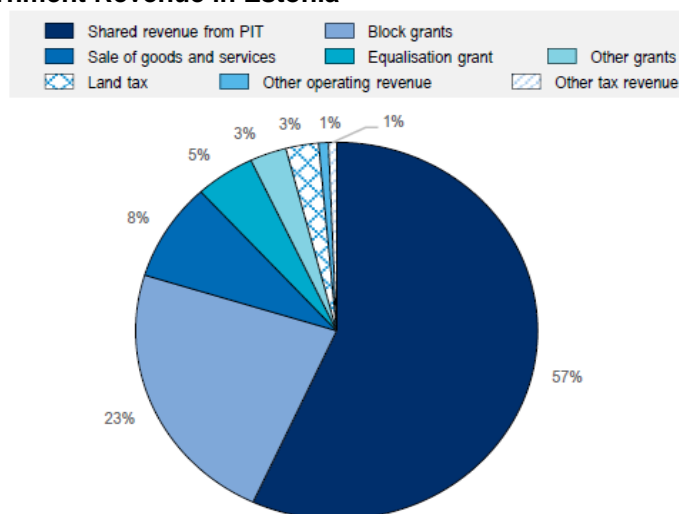
126. The Supreme Court judgment referred to in its decision above is unequivocal in its pronouncement that ‘the legislature must also make certain that the money allocated for performance of local government functions be distinct from the funds allocated for performance of national duties. ‘This allows a local authority to understand what funds are meant for deciding and organising local issues. This, in turn, allows for deciding how to use the money allocated for resolving local issues. In addition, the distinction between funds allocated for local government functions and national functions allows for evaluating the sufficiency of the funds allocated for local government functions’. However, in practice, these levels of adequacy and autonomy are not always achieved.

⁵⁴ <https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-8-09>

⁵⁵ <https://www.fin.ee/en/state-local-governments-spatial-planning/local-governments/local-government-financing>

127. There is a high dependence on grants from central government, many of which are earmarked for delegated functions. Figure 3 shows the source of local government revenue in Estonia.⁵⁶

Figure 3. Local Government Revenue in Estonia



128. Estonia's subnational governments receive 1.5% of total general government tax revenue, which is the smallest share of all OECD countries (the OECD average is 20%). Measured as a share of GDP, the Estonian subnational government share is 0.3%, again the smallest share of all OECD countries (OECD average is 5%).⁵⁷ Interlocutors frequently referred to the inadequacy of the funding.

129. A five-year review states that, as part of the 2017 administrative reform, political promises were made that the revenue base of local governments would be increased.⁵⁸ Since then, the local government share of income tax was gradually increased in total by 0,3 percentage points to 11,96% (i.e., approx. 34 million euros in each fiscal year at 2021 prices) and the equalisation fund by 25 million euros. In total, local government revenue base increased by 59 million euros, or 4.2%.⁵⁹ However, the Association of Estonian Cities and Municipalities asserts that 'between 2020-2023 the equalisation fund has grown by 0.2%. At the same time the CPI increased 19.4% in 2022 as compared to 2021 and personal income tax revenues grew 12.64 % (on a cash basis)'.⁶⁰

130. Interlocutors from local government level argue that despite the recent increases, local government revenue is not adequate to ensure fiscal capacity to implement the obligatory and desired policies. The Association of Estonian Cities and Rural Municipalities has made the following proposals to the state to ensure that local governments have sufficient financial resources: increasing the financial autonomy of the local governments and raising the share of income tax allocated to them; improving the formula used by the equalisation fund; extending the list of local taxes (e.g., tourist tax, sales tax), aiming to increase the right, capacity and responsibility of the local governments in shaping their own tax revenues.

131. While they have the legal and constitutional autonomy to decide how to spend their own resources, the local authorities' resources are inadequate and Estonian municipalities have a very limited level of own income and few opportunities to generate such income. The new coalition agreement contains a pledge to increase such opportunities. Implementation of this pledge would significantly improve the situation of local authorities. During the consultation procedure, local interlocutors informed the rapporteurs that in their opinion, the bill for the redistribution of funds between municipalities had been prepared by the government on an urgent basis without prior analysis. They consider that no systemic settlement has been proposed.

56 Statistics Estonia (2021[26]), Local Budgets Expenditure by Region/Administrative Unit [Statistical database], https://andmed.stat.ee/en/stat/Lepetatud_tabelid_Majandus.%20Arhiiv_Rahandus.%20Arhiiv/RR301

57 OECD (2022) available at: <https://www.oecd-ilibrary.org/sites/9bc74132-en/index.html?itemId=/content/component/9bc74132-en#section-d1e10439>

58 <https://fin.ee/media/7835/download>.

59 Ministry of Finance communication, 2023.

60 Association of Estonian Cities and Municipalities communication, 2023.

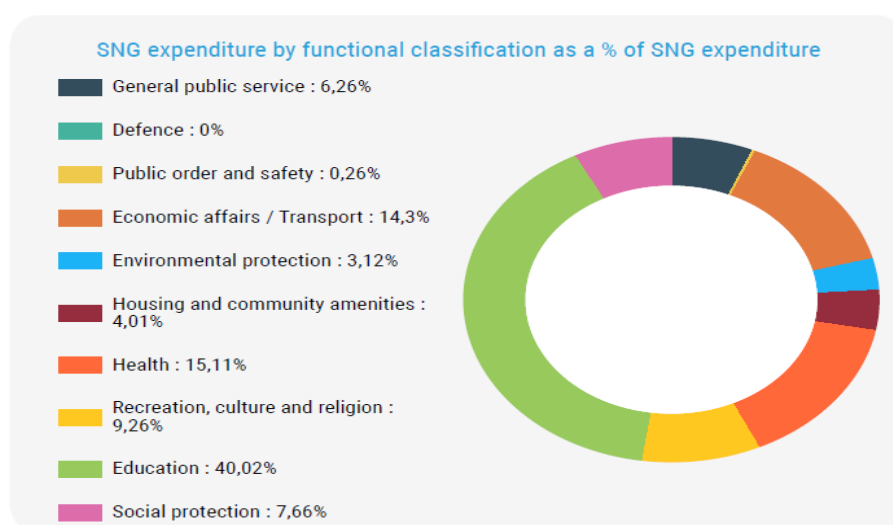
132. Therefore, the rapporteurs consider that Article 9.1 is partially complied with in Estonia.

3.8.2 Article 9.2

133. The principle underpinning Article 9.2, i.e., that local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law, requires that local authorities should have sufficient financial resources in proportion to the responsibilities assigned to them. This paragraph states that the revenues and mandatory tasks of local authorities should be balanced to ensure an adequate relationship between the financial resources available to a local authority and the tasks it performs.

134. The largest subnational government expenditure category is education, as municipalities are responsible for both current and capital expenditure in this area, accounting for 4.0% of GDP and for 40% of subnational government expenditure, above the OECD average of 24.3% in 2020. The next most important tasks are economic affairs, recreation and social protection. All municipalities, irrespective of population size or type, are expected to provide the same basic services.⁶¹ Figure 4 illustrates the areas of local government expenditure.

Figure 4. Local government expenditure by category



Source: SNG-WOFI

135. During the process of the 2017 administrative reform, local governments that carried out successful merger negotiations received specific grants, of varying amounts according to the procedure and size of the merger. Covid-19 also led to special payments to local government. The *Riigikogu* decided to allocate, through a supplementary budget for 2020, a total of 130 million euros of crisis support to local authorities. In 2021, the state allocated an additional 16 million euros to local authorities to cover the decline in revenues and the crisis costs, and 30 million euros as investment support.⁶²

136. The Contemporary Commentary stipulates that the resources available to local authorities should be sufficient and commensurate with their functions and tasks. The Estonian legal system continues to support the principle of commensurability. In 2017 the Supreme Court declared unconstitutional the failure to issue legislative acts providing for the financing from the state budget of the obligations imposed on a local authority under subsection 1 of § 83 of the Basic Schools and Upper Secondary Schools Act.⁶³

137. The 2017 Monitoring Report reasoned that if there is a lack of clarification of the situation with respect to the allocation of competences, local authorities constantly run the risk of having to finance delegated state competences. Such concerns persist but perspectives differ. During the monitoring visit, national level interlocutors were adamant that local authority resources were commensurate with their responsibilities. The Minister of Finance considers that 'local governments have plenty of flexibility to

⁶¹ SNG WOFI.

⁶² National Audit Office communication, 2023.

⁶³ <https://www.riigikohus.ee/en/constitutional-judgment-5-17-8>

optimise services”.⁶⁴ Similarly, the Ministry responsible for regional affairs considers that financial resources of local governments are in line with their responsibilities. The National Audit Office considers that the financial resources available to local authorities are generally but not universally commensurate with the tasks they are mandated to perform, drawing attention to the differing capacities and resource bases of local governments.⁶⁵

138. Subnational commentators expressed concerns about the cost implications of newly delegated tasks or reform of existing tasks. For example, an important sectoral reform that takes effect from 1 July 2023 is the general care service which is organised by local governments on the basis of the Social Welfare Act. The state will allocate funds for the local governments to implement the reform, but it is not yet known how large a share it will cover. During the consultation procedure, the Ministry of Finance indicated that the Ministry of Social Affairs had made model calculations regarding reform showing that allocated funds are enough to cover costs and considered that municipalities had broad autonomy to decide the price level of the long-term care component through which they intend to fund each person in homes for the elderly. However, the rapporteurs were informed that according to forecasts cited by the Association of Cities and Municipalities, Tallinn would be short of 10 million euros, Tartu 3 million euros and Pärnu 1 million euros next year.⁶⁶ Similarly, the decision by central government to increase salaries of teachers paid by the state had unforeseen consequences for local government who are responsible for the salaries of kindergarten teachers. In order to retain their kindergarten teachers, municipalities felt obliged to award them a similar pay increase, which depleted municipal resources.

139. In light of the above, the rapporteurs consider that the resources available to local authorities are not fully commensurate with their functions and tasks, so Article 9.2 is partially complied with in Estonia.

3.8.3 Article 9.3

140. Article 9.3 focuses on the need for local authorities to derive at least part of their financial resources from local taxes of which they have the power to determine the rate (within the limits of statute). The power to levy local taxes is seen as direct evidence of local financial autonomy. The Charter does not state that a local authority’s own resources must contain a uniform proportion of local taxes, but it does make it mandatory for “at least” part to derive from local taxes and charges.

141. Article 157 of the Estonian Constitution decrees that municipalities have the right, on the basis of a law, to establish and collect taxes, and to impose duties. The recognition by the European Charter of Local Self-Government Article 9.3 of the right of local authorities to establish taxes was referred to by the Supreme Court in its judgment on Case 3-3-1-48-16 (clause 45). However, the own resources of local government in Estonia are extremely limited. About 3% of subnational government revenue comes from taxes in Estonia (2017 situation). In the OECD, taxes represented 35% of SNG revenue (unweighted average) and 44% (weighted average).⁶⁷

142. Rural municipality or city councils do issue regulations for the imposition of local taxes, but the taxes are limited to advertisement tax, road and street closure tax, motor vehicle tax, animal tax, entertainment tax and parking charges. In 2020, about 8.4% of municipal revenue consisted of revenue from user fees and sales of goods and services. Other notable municipal tax revenues comprise advertisement tax, road and street closure tax and parking charges. Taken together, these taxes make 1.1% of municipal tax revenues and 0.6% of total operating revenue.⁶⁸ Local authorities do have the power to determine that rate of taxes within nationally set limits. The introduction of taxes is regulated by the Local Taxes Act, Section 5 of which lists six local taxes the local council may impose.⁶⁹

143. The right of local authorities to establish taxes is legally and constitutionally underpinned in Estonia but the range of local taxes is so limited that the proportion of local government income generated by them makes little impact. There are some grounds for optimism. In 2023, a wind turbine fee for electricity production entered into force, the rate of which can be established by the local government. National level interlocutors informed the delegation that land valuations have recently been revised and new rates of land tax come into force in 2024. This will increase the land tax revenue potential of local

⁶⁴ Ministry of Finance communication, 2023.

⁶⁵ NAO communication, 2023.

⁶⁶ Ibid. Ministry of Finance communication, 2023.

⁶⁷ OECD 2022.

⁶⁸ Statistics Estonia, 2021[26].

⁶⁹ Lääne, S., Mäeltsemees, S., & Olle, V. (2018), Challenges of the Implementation of the European Charter of Local Self-Government in Estonian Legislation, *Lex Localis*, 16(4), 983-1002.

governments by 2.5 times. The decision on the amount of the land tax is up to local authorities within the limits set by the state but 100% of the land tax is retained by local authorities.

144. The new government included in its coalition agreement several references to improving the finances of local government. For example, in the section of regional development there is a clear commitment to improved financing: 'We will increase the financial autonomy of local governments. We will enable greater flexibility for local governments in establishing local taxes'.⁷⁰ Mention has also been made by the new and previous governments of the possible introduction of new local taxes such as a tourist tax and/or sales tax.

145. The rapporteurs note the willingness to consider expanded local taxes, but the paucity of resources derived from local taxes leads to the conclusion that Article 9.3 is not currently complied with in Estonia.

3.8.4 Article 9.4

146. The Contemporary Commentary argues that the diversification of income sources is crucial if local authorities are to maintain their autonomy during fluctuation in economic cycles. At the same time, income sources should be diverse to ensure local authorities' resilience to external economic factors. Article 9.4 also emphasises that systems of local finance should be buoyant., i.e., 'able to adapt to new circumstances, needs and macroeconomic scenarios and be sufficient to cover service delivery'.⁷¹

147. The high dependence by local government on state grants and support indicates that the financing system is neither buoyant nor sufficiently diversified in Estonia. Neither has it evolved in line with the full cost of implementing the expanding and complex tasks carried out by local authorities.

148. The uneven population distribution between urban, suburban and rural municipalities causes disparities between population base, infrastructure and service capacity. Although some recognition of urban-rural differences is evident in the equalisation fund formula, elimination of disparities would require further diversification and buoyancy of resources.

149. The fact that more than half the income of local authorities comes from personal income tax (PIT) which is fixed and allocated by central government means that there is no potential for diversification or buoyancy in this important segment of local government income. Similarly, the income from the support fund is for specific purposes with no diversification potential. However, a positive development was removal, in 2019, of the requirement to use the money for dedicated purposes with regard to two support payments – support for developing waste management and for the provision of social assistance. Similarly, the support for alternative care and continued care, as well as funeral benefits are to be transferred from the support fund into the revenue base of local government starting from 2024.⁷²

150. The equalisation fund and the support fund foster some buoyancy but in a reactive rather than pro-active approach. The entitlement of local government to set the rates for local taxes does little to ensure buoyancy or diversification because income from local taxes is such a low proportion of the local government budget.

151. Therefore, the rapporteurs consider that Article 9.4 is partially complied with in Estonia.

3.8.5 Article 9.5

152. The Contemporary Commentary states that Article 9.5 of the Charter aims to ensure sufficient financial resources, allowing local authorities not only to cover the expenses relating to their own and delegated functions but also those relating to the political and administrative apparatus necessary to carry out the tasks assigned to them. It thus addresses the question of the financial situation of municipalities that are financially disadvantaged.

153. Estonia's equalisation fund represents an earnest attempt to correct the effects of the unequal distribution of potential sources of finance and of the financial burden which local government bears. The equalisation fund aims to provide local governments with uniform conditions for the performance of local

⁷⁰ <https://valitsus.ee/en/coalition-agreement-2023-2027>

⁷¹ Contemporary Commentary, paragraph 164.a

⁷² Association of Estonian Cities and Municipalities communication, 2023.

government tasks without imposing conditions for the use of the resources. According to the NAO, more than half the local governments receive money from the equalisation fund.

154. The exact amount transferred from the fund to each local government is defined in the yearly state budget negotiations and is based on three major principles: an average expense need based on population size and age structure, coefficient of rurality/remoteness and the weighted lagged accounting revenues of each local administration.⁷³ The fund allows local authorities to exercise discretion in how they allocate the funds within their own spheres of responsibility.

155. The equalisation grant is based on the difference between the estimated average operating cost of the municipality and estimated own revenue of the municipality. The estimated revenue consists of municipal share of income tax revenue and land tax revenue and estimated expenditure is based on calculations using data on projected expenditure needs. Currently, 90% of the difference is considered. The equalisation formula also takes into account the "island municipality" status.

156. Interlocutors advocated changes. The AECM suggests changes in the formula used to calculate the fund such as increasing the coefficient for remoteness and including the consumer price index (CPI). The NAO suggests including more demographic and geographical characteristics as well as considering whether the local government has made reasonable use of the opportunities to maximise its own revenue.

157. Generally, the rapporteurs are of the opinion that the equalisation fund should be increased and that the allocation formula should be further improved to assign the financing according to local needs and demand.

158. That said, the rapporteurs consider the situation in Estonia to be overall in compliance with Article 9.5.

3.8.6 Article 9.6

159. This article refers to the general principle of consultation, as enshrined at Article 4.6. but Article 9.6 specifically focuses on the system by which redistributed resources are to be allocated to local authorities. The Contemporary Commentary stresses that consultation is required on the way in which redistributed resources are to be allocated to local authorities by other levels of government.

160. In Estonia there are some provisions for such consultation. Section 46 of the State Budget Act contains specific procedures for negotiations between local authorities, associations and state representatives with respect to aspects of the budget such as:

- the amount and principles of receipt of transferable taxes;
- the principles of distribution, conditions of use, principles of formation of amount, and the amounts of support for the budget strategy period and budgetary year;
- the principle of covering the expenses of the state functions imposed on a local government by law;
- the methodology of recording the information specified in clauses 1 and 2 in the budget strategy and the draft state budget;
- the measures for ensuring financial discipline and amount of surplus or deficit of the consolidated budget of a local government for the budget strategy period;
- the measures for the local governments which improve the structural budget position of the general government sector.

161. In recent years, new working groups have been added to the yearly budget negotiation process with the Association of Estonian Cities and Municipalities. These focus on 1) local level ICT; 2) integration; 3) spatial planning, housing and land; and 4) security and crisis preparedness.

162. Although a draft regulation of the Minister, draft legislation or any other question pertaining to the rights, obligations, tasks of the local government or the organisation of local life, must be coordinated by a national association of local governments before submission to the relevant minister or Government of the Republic, local government actors state that frequently the impact of such measures

73 <https://portal.cor.europa.eu/divisionpowers/Pages/Estonia-Fiscal-Powers.aspx>

on local budgets has not been fully assessed. They also referred to the frequent use of tight deadlines for consultation so comprehensive analysis of the proposals is not possible.

163. Laws and systems for consultation regarding redistribution of resources are in place in Estonia. To strengthen the consultation process with local government actors, the process could be more timely, pertinent and meaningful, particularly with regard to assessing the impact and costs involved in any new State legislation to be implemented at local level.

164. The rapporteurs acknowledge the structures and processes in place for consultation and note the growing role of the AEMC in negotiations on the redistribution of resources in Estonia. Accordingly, the rapporteurs consider that Article 9.6 is globally complied with, but they observe the need for a more wholehearted approach to consultation processes by some national actors.

3.8.7 Article 9.7

165. The Contemporary Commentary asserts that the ratio of conditional (earmarked) and unconditional (general) grants is considered a relevant indicator for measuring the financial autonomy of local authorities. Article 9.7 seeks to ensure an effective balance between conditional and unconditional grants, thereby reducing restrictions on a local authority's freedom to exercise discretion with regard to its expenditure priorities. This provision also seeks to ensure that a grant for a specific purpose does not undermine a local authority's freedom to exercise discretion within its own sphere of competence.

166. Block grants account for 81% of all grants to municipalities in Estonia.⁷⁴ Block grants are earmarked for specific purposes such as teachers' salaries. Not only does this create dependence on the centre to finance tasks but it also weakens the municipal decision-making power and reduces discretion since it precludes the making of choices to respond to local needs. The Ministry of Finance pointed out that in the period 2017-2022 some earmarked block grants for specific purposes were redirected to the revenue base of local governments. This move is welcome.

167. Earmarked grants are used as a tool to implement national policies uniformly but they restrict the financial autonomy of local authorities.

168. Therefore, the rapporteurs consider that Article 9.7 is not complied with in Estonia.

3.8.3 Article 9.8

169. Article 9, paragraph 8, refers to local authority access to the national capital market for the purpose of borrowing for capital investment. Such borrowing enables local authorities to finance important projects. Access to the capital markets is obviously affected by national fiscal policy and the governance of public debt, hence paragraph 9.8's emphasis on the limits of the law.

170. The Local Government Financial Management Act⁷⁵ stipulates the following principles:

- compliance with the requirement of balance between operating revenue and expenses;
- compliance with the maximum net debt burden; as a rule, the net debt burden may be 60% to 100% of the operating revenue of the local government in the respective financial year depending on their financial capacity;
- acquisition of shares only for the performance of public functions.

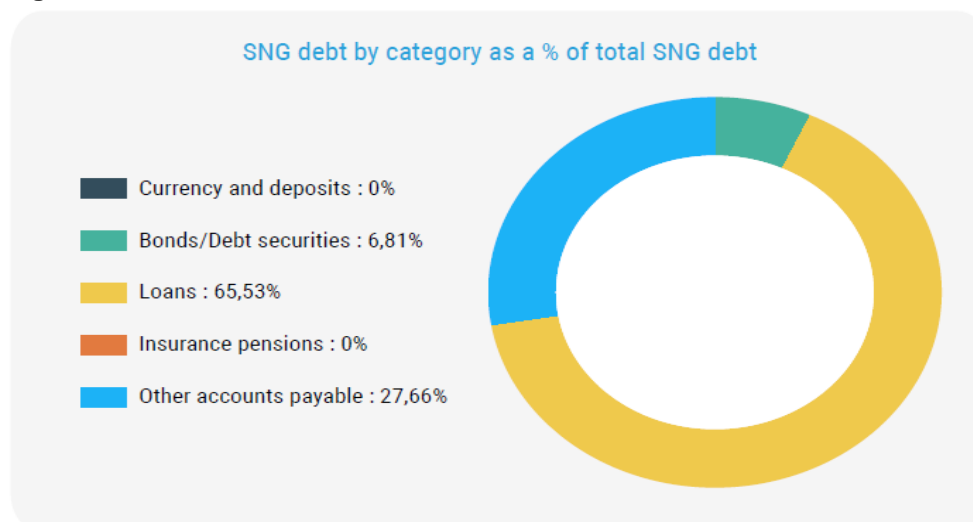
171. Local governments have the freedom to borrow from commercial banks, issue bonds etc. Every local government, regardless of financial capacity can borrow up to 60% of its primary revenues.

172. Local government debt in Estonia is mostly in the form of loans with a small percentage relating to bonds⁷⁶ as Figure 5 illustrates.

⁷⁴ <https://www.sng-wofi.org/country-profiles/estonia.html>

⁷⁵ <https://www.riigiteataja.ee/en/eli/521122020004/consolide>

⁷⁶ <https://www.sng-wofi.org/country-profiles/estonia.html>

Figure 5. Local Government Debt

Source: OECD WOFI

173. According to preliminary data from Statistics Estonia, the local government consolidated debt was 987 million euros at the end of 2022. Long-term loan liabilities increased by 10%, but the volume of long-term securities continued the downtrend and decreased by nearly a fifth, year on year. The share of foreign debt remained at the same level at 26% of local government debt.⁷⁷

174. Interlocutors did not express concerns about the conditions for borrowing.

175. Therefore, the rapporteurs consider that Article 9.8 is complied with in Estonia.

3.9 Article 10 – Local authorities’ right to associate

Article 10 – Local authorities’ right to associate

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

3.9.3 Article 10.1

176. Article 10, paragraph 1, refers to types of functional co-operation between local authorities either seeking greater efficiency through joint projects or seeking increased effectiveness by carrying out tasks which are beyond the capacity of a single authority. Local authorities have a general right to co-operate with one another in order to deliver local services or discharge their responsibilities. This entitlement to cooperate with other local entities is supplemented by a more specific right, namely the right to form consortia, i.e., to create separate organisations and/or joint institutional structures.

177. In accordance with Article 159 of the Constitution, municipalities in Estonia have the right to form associations and joint agencies with other municipalities. Chapter 10 of the Local Government Organisation Act is concerned with co-operation between local authorities stating that ‘for the expression, representation and protection of common interests and for the performance of common functions, rural municipalities and cities may cooperate, grant authority to another rural municipality or city for this purpose, form associations of local authorities and other organisations and form joint administrative agencies or joint agencies for the performance of joint functions’. Clear guidelines are included for the establishment and operation of such bodies. A local government may, together with other local governments, be a partner or shareholder in a company, and also establish foundations and be a member of a non-profit association taking account of the terms and conditions stipulated in the Local Government Financial Management Act. However, the OECD points out that ‘since only 14% of

⁷⁷ <https://www.stat.ee/en/news/general-government-deficit-decreased-last-year-debt-level-was-stable-corrected-24032023#>:

municipal revenue comes from own revenue sources, municipal incentives for engaging in voluntary co-operation are low.⁷⁸ Yet, inter-municipal co-operation is well established in Estonia.

178. The 2017 reform of local government led to the merger of many smaller municipalities, many of which had a history of collaboration. Since 2018, collaboration has become mandatory in some spheres. Local authorities have been assigned new functions for joint implementation. Pursuant to law, the local authorities in each county must jointly plan the development of the county. Regional development strategies for the county or the territories of several counties are jointly prepared and implemented for this purpose. In addition, coordination of security councils, health promotion and organisation of culture are also joint functions of local authorities. In most counties, these joint functions are performed by county local authority associations. One of the joint functions of local governments since 2018 has been the organisation of public transport (bus and ferry traffic) in counties in cooperation with the national Road Administration via the regional transport centres formed for this purpose.

179. Inter-municipal co-operation is actively encouraged in Estonia and the procedures, requirements and steps that must be followed for the establishment and operation of collaborative entities are clearly articulated.

180. In light of the above, it appears that the situation in Estonia is in accordance with Article 10.1 of the Charter.

3.9.4 Article 10.2

181. This provision is concerned with the promotion of common interests through formal organisations. It sets out the right of local authorities to belong to both a national association for the protection and promotion of their common interests and international associations of local authorities. Such associations play a fundamental role in representing and defending the rights, powers and interests of local authorities and carry out many activities on their behalf.

182. Associations of local authorities are an important form of cooperation between local authorities in Estonia and their activities are regulated by the Local Government Associations Act. The 2017 reform resulted in significant changes. The 5-year review of the reform concludes that 'the current situation of county local government associations and other county development organisations in Estonia varies from region to region. It makes it more difficult for the state to plan the supra-municipal tasks and the possible delegation of such tasks'.⁷⁹ Following the reform, the Association of Rural Municipalities and the Association of Estonian Cities merged into the Association of Estonian Cities and Municipalities (AECM). This is the association which now represents the common interests of local authorities and plays an important role in national negotiations.

183. Interlocutors did not raise any issues regarding the entitlement of local authorities to belong to the AECM or about the official status of the organisation.

184. Therefore, the rapporteurs conclude that Article 10.2 is fully complied with in Estonia.

3.9.5 Article 10.3

185. Article 10.3 refers to the cooperation of local authorities with their counterparts in other states and reinforces the right to engage in cross-border cooperation. This Charter provision sets out the right to engage in transnational or transborder co-operation, an important form of inter-local co-operation.

186. Section 13 of the Local Government Organisation Act refers to international cooperation between local authorities and states that:

- (1) Municipal councils, municipal administrations and administrative agencies have the right, within their competence, to cooperate with all other local authorities outside of Estonia and enter into contracts with these. Administrative agencies shall inform the municipal council of such cooperation.
- (2) Local authorities have the right to become members of international organisations and to co-operate with such organisations.

⁷⁸ OECD 2022.

⁷⁹ <https://fin.ee/riik-ja-omavalitsused-planeeringud/kohalikud-omavalitsused/haldusreform-2015-2017#haldusreformi-seirer>

187. Most municipalities in Estonia have relations and friendship agreements with local authorities abroad, the majority of which are in the Baltic States and Nordic countries. Membership of the EU has also brought many opportunities for trans-national co-operation. International projects such as URBACT, INTERREG, EUREGIO and others are the most popular forms of cross-border cooperation. Other forms include the twin cities and rural municipalities movement, the Covenant of Mayors and work with other international organisations. The Estonian and Finnish Associations of Local Governments have entered into a co-operation agreement for 2023–2026. Eighteen Estonian local governments that have a twin city or rural municipality in Ukraine have been helping them since the beginning of the Russian Federation's war of aggression against Ukraine.

188. Local government in Estonia is entitled and enabled to co-operate with their counterparts in other states.

189. Therefore, the rapporteurs consider that Article 10.3 is complied with.

3.10 Article 11 – Legal protection of local self-government

Article 11 – Legal protection of local self-government

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

190. Article 11 of the Charter refers to an effective judicial remedy to ensure respect for local self-government. "Recourse to a judicial remedy" means access by a local authority to either a properly constituted court of law or an equivalent, independent, statutory body.⁸⁰ This provision requires that local authorities have a right to invoke and defend in the courts the principles of local self-government. This is particularly important in the context of lawsuits in which the rights and powers of local governments are challenged or curtailed, or in instances where those rights are endangered by higher levels of government.

191. Article 149 (3) of the Constitution designates the Supreme Court as the highest court in Estonia. The Supreme Court reviews court decisions by way of cassation proceedings and is also a court of constitutional review.

192. There are two procedures for the judicial settlement of public law disputes between local authorities and the state, namely, administrative court proceedings and constitutional review proceedings. A rural municipality or a city may bring primary claims against an administrative act or measure (Chapter 2 of the *State Liability Act*), as well as claim compensation from the administrative authority for damage caused by administrative action pursuant to subsection 1 of § 17 of the State Liability Act. In administrative court proceedings, a local authority may bring annulment, mandatory, prohibition, compensation, reparation, and declaratory complaints (subsection 2 of § 37 of the Code of Administrative Court Procedure).

193. In Estonia, according to § 7 of the Constitutional Review Court Procedure Act, adopted on 13 March 2002, the council of a local authority may file with the Supreme Court a petition to declare an Act which has been promulgated but which has not yet entered into force, or a regulation of the Government of the Republic or of a minister, which has not yet entered into force, to be contrary to the Constitution, or a petition to invalidate an Act which has entered into force, a regulation of the Government of the Republic or a minister or a provision of such an Act or such a regulation, if it is contrary to the constitutional guarantees of local government.

194. Thus, local governments have the right of recourse to the courts for the protection of their lawful rights and for the resolution of disputes and this right is frequently asserted. Below are some examples of local government issues brought before the Supreme Court:

- In 2016, some 26 local governments appealed to the Supreme Court for a review of the constitutionality of the Administrative Reform Act;⁸¹
- Since 2014, 17 rural municipalities have contested compulsory mergers;
- In 2017, the Supreme Court declared unconstitutional the failure to issue legislative acts providing for the financing from the state budget of the obligations imposed on a local authority under subsection 1 of § 83 of the Basic Schools and Upper Secondary Schools Act;

⁸⁰ Contemporary Commentary, para 206.

⁸¹ Supreme Court of Estonia, Communication, 2023.

- In 2019, a ruling was published on the constitutionality of some provisions of the Planning Act concerning national designated spatial plans because of their potential conflict with the right of local self-government;
- A ruling in 2023 found that the general requirements for the provision of pre-school education derive from state legislation, and local government is responsible for its availability.

195. In addition to the protection offered by the Supreme Court and Administrative Court, local authorities may invoke the President of the Republic (Article 107 of the Constitution), the Chancellor of Justice or the National Audit Office if they allege infringement by state with respect to the core guarantees of local self-government. Appropriate legal remedies are available and judicial protection of local self-government is well established.

196. Therefore, the rapporteurs consider that Article 11 of the Charter is complied with in Estonia.

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

Recent political changes

197. A new government took office in April 2023, a coalition of the Reform-Eesti 200-SDE parties. During the electoral campaign, the main issues were the security situation and the cost of living with less focus on the topics of health and education which dominated previous campaigns. In her address to Parliament, the Prime Minister, Kaja Kallas, referenced a number of policy goals contained in the coalition agreement. These include ensuring security; sustainability of state finances; carrying out green reforms; reducing regional underdevelopment; reducing income inequality; increasing healthy years of life and life expectancy and the full switch to Estonian-only education.⁸² The latter was highlighted by some interlocutors during the monitoring visit, as it could strongly impact local authorities. Negotiations leading to formation of the coalition included a plan to revise 'the division of tasks between the central and local governments as well as the latter's funding model',⁸³ a commitment subsequently contained in the regional development section of the formal coalition agreement.

198. Ministerial responsibilities were re-assigned and, significantly for local government, a Ministry with specific responsibility for regional and rural affairs is expected to be established.⁸⁴ In addition to rural affairs, this minister will be responsible for developing and advising local government units; financial management of local governments; organising the use of regional programme resources; planning and coordination of regional development and administration; organising and supervising spatial planning activities, postal communication; matters pertaining to the regional development of and investment in enterprises; planning and organising activities linked to public transport within the area of competence of local governments, with the exception of major procurements; accessibility; shaping rural policy; registering and updating land data and making such data available to the public; fulfilling tasks linked to spatial databases and guiding and implementing land reform operations.⁸⁵ Although the specific ministerial tasks had not been announced prior to the monitoring visit, interlocutors welcomed the upcoming appointment of a Minister with specific responsibility for regional and rural affairs.

The impact of the Ukrainian refugee crisis

199. Estonia was one of the first countries to help Ukraine, to which it sent anti-tank missiles in the first weeks of February 2022 and remains the country that has contributed most to the military equipment of Ukrainians in proportion to its GDP per capita.⁸⁶ Estonia has also been at the forefront in implementing the EU's Temporary Protection Directive (TPD). According to the IMF, Estonia has accepted over 62,000 Ukrainian refugees – as a share of population, more than any other EU country.⁸⁷ In addition to immediate support on arrival, refugees from Ukraine have been mainstreamed into the social support and protection framework Estonia provides to all its residents. Refugees from Ukraine are given the same level of social protection, access to health care, education and other benefits as

82 <https://news.err.ee/1608945311/kallas-to-riigikogu-coalition-agreement-has-the-face-of-war>

83 <https://news.err.ee/1608941543/sides-to-incoming-government-unveil-coalition-agreement>

84 The Ministry of Regional Affairs and Agriculture was formed in summer 2023, dealing with local government issues.

85 <https://valitsus.ee/en/news/prime-minister-kallas-confirms-areas-responsibility-ministers-new-government>

86 <https://www.robert-schuman.eu/en/eem/2032-the-reform-party-of-prime-minister-kaja-kallas-favourite-in-the-estonian-parliamentary-elections-on-5-march>

87 <https://estonianworld.com/life/estonia-has-accepted-the-largest-share-of-ukrainian-refugees-in-the-eu/>

Estonian citizens.⁸⁸ Local government in Estonia is actively involved in delivering these supports but is affected by the financial and administrative consequences. However, interlocutors pointed out that neither the state nor the local authorities were ready for the crisis caused by the war against Ukraine and the reception of war refugees. National level interlocutors informed the delegation that in 2022, over 2.5 million euros was allocated to local governments for providing emergency assistance to the Ukrainian war refugees and about 80 million for the provision of services. 27,5 million euros of it remained unused and was allocated to 2023. In 2023, 10 million euros will be allocated as a relief for the increased cost of energy.

The impact of the Covid-19 pandemic

200. Between January 2020 and April 2023, a total of 617,247 confirmed cases of COVID-19 and 2,979 deaths, were reported to WHO.⁸⁹ Central government approved new measures to support the areas and sectors most affected by Covid and many of these measures affected local government. The supplementary budget adopted in mid-April 2020 in response to the pandemic brought municipalities EUR 130 million. Of this, about EUR 30 million was paid to compensate for reduced revenue and increased costs due to the crisis, EUR 30 million was earmarked for local roads and EUR 70 million for new investments. Local governments were also permitted a higher debt burden than before, rising from 60% of annual revenue to 80% for the years from 2021 to 2025.⁹⁰

201. The impact of Covid-19 on municipal expenditure has been severe, despite the fact that municipalities are not directly involved in health care provision. The special arrangements and costs of protection needed in education and social services increased municipal costs (the total municipal expenditure change from 2019 to 2020 was 3%).⁹¹ During the consultation procedure, the Ministry of Finance indicated that overall costs were reduced during the COVID-19 emergency because institutions were closed. The Ministry of Finance added that the additional cost was marginal. However, the well-developed digital systems in place in Estonia, reduced the financial burden and eased the administrative and social repercussions by enabling the system of governance to continue. Nevertheless, Talving and Ehlin assert that the pandemic facilitated the concentration of power in the hands of the executive and that the government pushed through legislative proposals concerning migration, environment, and social affairs that extended beyond the immediate needs of the pandemic and undermined democratic values.⁹² Analysis of the impact by the NAO found that the support intended to assist local governments was granted without considering the impact of the crisis on the specific local government, and the investment support intended for economic recovery did not fulfil its purpose because its arrival to the economy was delayed.⁹³

The impact of climate change

202. Estonia has adopted a national strategy, Estonia 2035, which increases government focus on climate change and the UN SDGs. The allocation of EU structural funds in 2021 – 2027 is aligned with the Estonia 2035 goals.

203. The Estonian *Green Transition Action Plan 2023–2025*, deals with ten different areas: energy, mitigation of and adapting to climate change, just transition, knowledge-intensive and competitive green economy, sustainable spatial planning, preservation of biodiversity and backup of bioresources, transport and mobility, a sustainable food system, circular economy, and governance.⁹⁴ Complying with national and European climate change targets presents challenges for local government but there is strong public awareness and support for mitigation initiatives.

204. Local government interlocutors identified the main issues regarding climate change as lack of knowledge about the potential effects on the economy, and employment, issues which directly affect the revenue base of local authorities. Neither is it clear what kind of investments local authorities need to make and how such investments will be financed, e.g., to bring buildings into compliance with energy

88 https://www.unhcr.org/neu/wp-content/uploads/sites/15/2023/02/RRP_Estonia_ENG.pdf

89 [Estonia: WHO Coronavirus Disease \(COVID-19\) Dashboard With Vaccination Data | WHO Coronavirus \(COVID-19\) Dashboard With Vaccination Data](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/disease-dashboards/estonia)

90 <https://www.sng-wofi.org/country-profiles/estonia.html>

91 <https://www.sng-wofi.org/country-profiles/estonia.html>

92 Talving, L., & Ehin, P. (2022), Estonia: Empowering the Executive, in *Governments' Responses to the Covid-19 Pandemic in Europe: Navigating the Perfect Storm* (pp. 235-245), Cham, Springer International Publishing.

93 [RVKS Koroonakriisi viis õppetundi 08.11.2021 en EL F.pdf](#)

94 <https://www.riigikantselei.ee/en/news/green-transition-action-plan-2023-2025-received-lot-feedback-and-attention>

efficiency standards. However, local governments have also started to integrate aspects related to climate change more actively into spatial planning and transport management.

205. Tallinn is Europe's Green Capital 2023. The main priorities selected for the year are biodiversity, climate, eco-innovation and sustainability.

Highly-developed digital systems

206. As a result of decades of state policy, Estonia is the EU leader in digital public services, a factor which is significant for local government. Almost 90% of internet users have access to eGovernment services. Scores for digital public services, 92/100 for citizens and 98/100 for businesses, are close to the maximum, and well above the EU average.⁹⁵ The wide dissemination and take-up of digital identity solutions and digital signatures makes administration simpler for citizens and public servants.

207. The interoperability of digital systems assists all levels of government. The rapporteurs were informed that Estonia has launched various information systems in order to share public information, online. For example, in 2022, Estonia launched a state database of current spatial plans that enables citizens to access spatial data over the web. In 2023, Estonia will start to develop a state spatial plan procurement system that will enable new participatory methods.

208. Estonia is also at the forefront of digital democracy. With regard to e-democracy EIS is a platform for public consultation on all draft laws and VOLIS – is an online decision-making platform for local authorities. Electronic voting is possible for local, national and European elections. In the 2021 Local elections, 47% of the voters voted online. The e-vote turnout at the previous local election in 2017 was 31.7%.⁹⁶ For the first time, during the 2023 Parliamentary elections, the share of the vote cast electronically was higher than 50%.⁹⁷

209. The education system is also highly digitalised. The Estonian government claims that 'the Estonian school is mostly in the cloud, though books and traditional activities are valued as well. From 2020, schools are able to provide general education using only digital learning materials'.⁹⁸ This was hugely significant during the pandemic.

5. ADDITIONAL PROTOCOL TO THE CHARTER ON THE RIGHT TO PARTICIPATE IN THE AFFAIRS OF THE LOCAL AUTHORITY

210. Estonia signed the Additional Protocol to the European Charter of Local Self-Government on the rights to participate in the local government affairs (CETS N° 207) on 16 November 2009 and ratified it on

20 April 2011. The Additional Protocol has been repeatedly cited by the Supreme Court as a valid legal basis for assuring the constitutionality of Estonian laws in, for example, Judgment No. 3-4-1-47-13.

211. As indicated above in the section dedicated to the Article 3, paragraph 2, the Estonian Constitution grants citizens various rights of participation in addition to the specified forms of representative democracy;

- In Article 46 the right to address state agencies, municipalities and their officials with letters and petitions is given to citizens. The procedure for responding to such communications must be provided by a law.
- Article 47 of the Estonian Constitution gives the right, without prior permission, to assemble peacefully and to conduct meetings; and
- Article 48 grants the right to form non-profit organisations and associations.

212. Municipalities have the right to organise referendums on local issues, even though the outcomes are non-binding. According to the Local Government Organisation Act, popular local initiatives signed by at least 1% (however not less than five residents with the right to vote) of the residents of a rural municipality or city with the right to vote, must be discussed by the local council, or rural municipality or

⁹⁵ [DESI 2022 Estonia_eng_LELKUDOD0NI4pnkf8S4QIQCVSA_88701.pdf](#)

⁹⁶ <https://news.err.ee/1608372906/estonia-s-local-elections-2021-results>

⁹⁷ <https://news.err.ee/1608904730/estonia-sets-new-e-voting-record-at-riigikogu-2023-elections>

⁹⁸ https://e-estonia.com/solutions/education_and_research/education_system/

city government (depending on which body's competence the initiative matter belongs to), although this provision is rarely exercised.

213. As mentioned earlier, various participatory strategies have been implemented in Estonia to involve citizens in local government. A national spatial planning information system has been put in place in Estonia. Participatory budgeting is widely used. In 2023, 50 municipalities in Estonia use a participatory budgeting model for citizen engagement and empowerment.⁹⁹ There is a strong emphasis on youth participation in Estonia. In 2022, municipal youth councils were active in 76 (out of 79) municipalities.

214. Additionally, during the monitoring visit, the platform VOLIS was introduced to the delegation. It is an online decision-making platform for local authorities. Participatory budgeting initiatives generally focus on creating a better living environment, providing a public space or supporting a cultural event, sporting competition, etc.

215. The rapporteurs note the good practices present in the country on participation in public affairs at local level.

6. CONCLUSIONS AND RECOMMENDATIONS

216. In recent years, international and domestic change and uncertainty have impacted Estonia, affecting government at all levels. The Covid-19 pandemic, the Russian Federation's war of aggression against Ukraine, increased fuel costs and political instability at the national level have combined with increased commitments to spending on defence, education and reduced taxes to create a precarious situation. However, the new government has a comfortable majority, with 60 out of 101 seats which augurs well for implementation of the coalition agreement signed in April 2023.

217. Local authorities in Estonia have a wide range of responsibilities and deliver many social services to citizens. Consequently, they are key actors in responding to the challenges facing the country. Demographic issues such as the ageing population and rural depopulation; increased demand but less finance for social services; limited economic development opportunities in a financially constrained environment; support for and integration of refugees; educational reform such as the transition to Estonian-medium education and the expansion of hobby education are problematic spheres for local government. Other challenges affecting local government include climate change, pollution and waste management. Responding to those challenges requires a combined approach from national and local government and the prioritisation of the measures designed to increase the role and resources of local government which are contained in the recent coalition agreement.

218. In addition to national and international uncertainties, local authorities in Estonia have been adjusting to the changes brought about by the 2017 reform. The local mergers and abolition of the counties transformed the local government landscape and functioning. The reform has been generally well received. The e-questionnaires conducted by OÜ Geomedia for a five-year review of the reform, yielded generally positive assessments. 21% of the respondents thought that the administrative reform made local governments significantly stronger, and 54% were of the opinion that the reform helped to solve the bottlenecks of local governments, but only partly.¹⁰⁰ There were many positive responses concerning improved management capacity and the improvement of the diversity and quality of services, but concerns were also raised about the financial capacity of local governments after the administrative reform. That topic of financial capacity of local government was a recurrent theme during the monitoring visit and in the written communications from various interlocutors. The transfer of powers and obligations concerning delivery of local public services is not always accompanied by financial resources commensurate with local government responsibilities. The high dependence of local government on the centre for resources and the limited potential for and use of taxation autonomy by local authorities constrains their ability to tailor their actions to local specificities. While the current equalisation and support funds redistribute resources, there is a need to review the criteria and implementation processes to enable a more nuanced approach to redressing inter-authority disparities. The issue of local taxes is still unresolved although there are clear indications that more local taxes will be introduced. An effective system of local taxes, appropriate to both rural and urban local authorities, would foster financial autonomy.

⁹⁹ <https://fin.ee/media/2539/download>

¹⁰⁰ <https://fin.ee/media/7835/download>

219. There are many linkages between central and local government in the Estonian system, through shared competences and administrative and political relationships, with some politicians having both local and national mandates. There are formal structures and processes for consultation of local government by national level. But intergovernmental interaction is not currently achieving the anticipated impact. Two issues were particularly noted by the delegation: the lack of clarity about the division of competences between governmental levels and the deficiencies in the system of consultation between central and sub-national levels.

220. Interlocutors highlighted that, while many of the recommendations from previous monitoring missions remain pertinent, due to the continuing reform processes, the situation of local self-governance in Estonia is improving. Indeed, local government in Estonia has undergone significant reform since the previous monitoring visit in 2016, particularly the 2017 administrative territorial reform which addressed some of the recommendations made by that delegation. The domestic and international environments in which Estonian local government operates have changed significantly. Interlocutors indicated a shared desire to increase the effectiveness of the local government system. The rapporteurs consider that the new government, with its plans for an increased recognition of and resources for local government offers an opportunity to do so, even if local interlocutors pointed out that, to date, no systematic settlement has been proposed by the government.

APPENDIX – Programme of the Congress monitoring to Estonia (18-20 April 2023)

**MONITORING OF THE APPLICATION OF THE EUROPEAN CHARTER
OF LOCAL SELF-GOVERNMENT IN ESTONIA**

**Tallinn, Tartu, Jõgeva, Mustvee
(18-20 April 2023)**

PROGRAMME

Congress Delegation

Rapporteurs:

Mr Harald BERGMANN

Rapporteur on local democracy
Chamber of Local Authorities, ILDG¹⁰¹
Member of the Monitoring Committee
Mayor of Middelburg
Netherlands

Mr Sören SCHUMACHER

Rapporteur on regional democracy
Chamber of Regions, SOC/G/PD
Member of the Monitoring Committee
Member of the *Hamburgische Bürgerschaft*
Germany

Congress secretariat:

Mr Guillaume LOISEAU

Co-Secretary to the Monitoring Committee of the
Congress

Expert:

Dr Bríd QUINN

Member of the Group of Independent Experts on the
European Charter of Local Self-Government of the
Congress (Ireland)

Interpreters:

Karin SIBUL
Kaja SAKK

¹⁰¹ EPP/CCE: European People's Party Group in the Congress.
SOC/G/PD: Group of Socialists, Greens and Progressive Democrats.
ILDG: Independent Liberal and Democratic Group.
ECR: European Conservatives and Reformists Group.
NR: Members not belonging to a political group of the Congress.

**Tuesday, 18 April 2023
Tallinn**

- **Joint meeting with the National delegation of Estonia to the Congress, with national associations and independent expert:**
 - National delegation of Estonia to the Congress:**
 - **Ms Annika VAIKLA**, Deputy Head of Delegation, Municipal Councillor, Viimsi Rural Municipality
 - **Mr Ott KASURI**, Municipal Councillor, Harku
 - **Mr Aivar NIGOL**, Vice-Mayor, Otepää Rural Municipality
 - Association of Estonian Cities and Municipalities (AECM):**
 - **Mr Mihhail KÕLVART**, President of the Board, Mayor of Tallinn
 - **Mr Erkki-Alo KIRDE**, Adviser to the Mayor
 - Independent Expert:**
 - **Mr Kersten KATTAL**, Alternate member of the Group of Independent Experts on the European Charter of Local Self-Government
 - Youth delegate:**
 - **Mr Henry KASK**, Youth delegate for Estonia
- **Tallinn City Government and City Council:**
 - **Mr Mihhail KÕLVART**, Mayor of Tallinn
 - **Mr Jevgeni OSSINOVSKI**, Chairman of the City Council
 - **Mr Silver TAMM**, Director of Finance
 - **Ms Angelika KALLAKMAA-KAPSTA**, Consultant, City Secretary's Office
 - **Ms Terje KRAIS**, Head of the Claims Department, Legal Service
 - **Mr Erkki-Alo KIRDE**, Adviser to the Mayor
 - **Ms Heili LUIK**, Head of International Cooperation Bureau
- **Parliament (*Riigikogu*):**
 - **Mr Toomas KIVIMÄGI**, First Vice-President of the *Riigikogu*
 - **Ms Eva VALIUS**, Advisor, Foreign Relations Department, Chancellery of the *Riigikogu*
- **Chancellor of Justice (*Õiguskantsler*):**
 - **Mr Olari KOPPEL**, Deputy Chancellor of Justice
 - **Mr Vallo OLLE**, Senior Adviser
 - **Ms Kertti PILVIK**, Head of International Relations and Organisational Development
- **Association of Estonian Islands (*AEI*):**
 - **Ms Maris JÕGEVA**, member of the Board of the Association of Estonian Islands (AEI), Mayor of Vormsi Island-Municipality

**Wednesday, 19 April 2023
Tallinn, Tartu**

- **Ministry of Finance:**
 - **Ms Kaia SARNET**, Deputy Secretary General on Regional Affairs
 - **Mr Sulev LIIVIK**, Head of the Local Government Financial Management Department
 - **Mr Kaur KAASIK-AASLAV**, Local Government Policy Department, responsible for Harju region
 - **Ms Kaie KÜNGAS**, Local Government Policy Department, adviser
 - **Ms Olivia TALUSTE**, Local Government Policy Department, legal adviser
 - **Mr Andres KUNINGAS**, Head of EU and International Co-operation Department

- **National Audit Office (*Riigikontroll*):**
 - **Mr Janar HOLM**, Auditor General
 - **Ms Airi MIKLI**, Adviser to Auditor General

- **Supreme Court of Estonia (*Riigikohus*):**
 - **Mr Heiki LOOT**, Justice at the Administrative Law Chamber
 - **Ms Kaidi TARROS**, Adviser to the Administrative Law Chamber
 - **Ms Katri JAANIMÄGI**, Adviser to the Constitutional Review Chamber

**Thursday, 20 April 2023
Tartu, Jõgeva and Mustvee**

- **Tartu Municipality:**
 - **Mr Priit HUMAL**, Deputy Mayor of Tartu
 - **Mr Raimond TAMM**, Deputy Mayor of Tartu
 - **Mr Kaspar KOKK**, Chairman of the Tartu City Council
 - **Ms Kadri LEES**, Head of Department of Public Relations

- **Jõgeva Municipality:**
 - **Mr Asso NETTAN**, Vice-Mayor of Jõgeva

- **Mustvee Municipality:**
 - **Mr Indrek KULLAM**, Mayor of Mustvee
 - **Ms Julija ARTJUŠENKOVA**, Development Specialist