


# REFORM OF THE PUBLIC ADMINISTRATIONS







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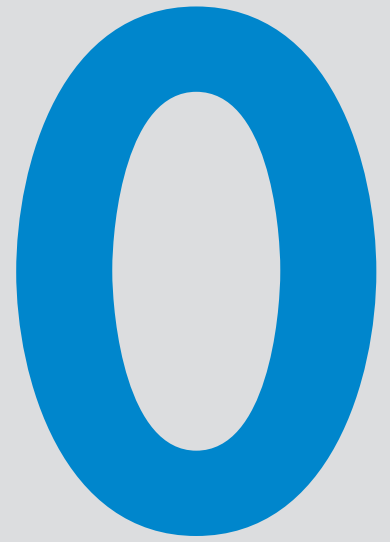
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## GLOSSARY

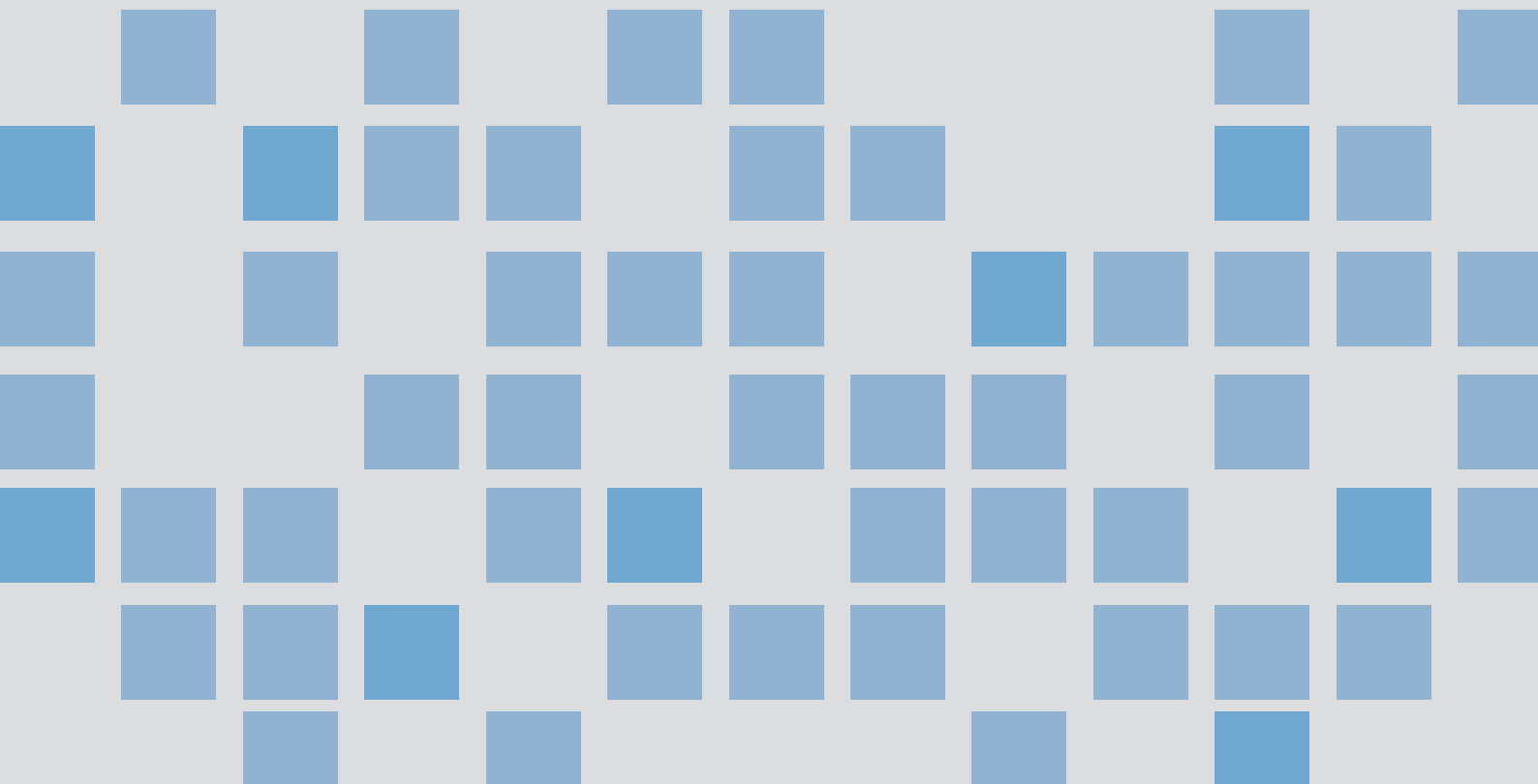
- General State Administration
- Public Administration / Government
- Spanish Agency for International Development Cooperation
- National Tax Administration Agency
- Agency for the Official State Gazette
- Higher Council for Scientific Research
- National Agency for Quality Assessment and Accreditation
- Bank of Spain
- Official State Gazette
- Civil Service Independent Trade Union
- Centre for Financial and Commercial Studies
- Centre for Legal Studies
- Centre for Political and Constitutional Studies
- Centre for Energy, Environmental and Technological Research
- National Reference Centre for the Application of Information and Communication Technologies
- Biomedical Research Network
- Data Processing Centres
- Energy City
- Executive Board of the Interministerial Remuneration Committee
- European Commission (EC)
- Financial Coordination Committee for Real Estate and Wealth Transactions
- National Commission on Markets and Competition
- Commission for Public Administration Reform
- Workers' Commissions
- Autonomous Communities
- Spanish Confederation of Employers' Organisations
- Spanish Confederation of Small and Medium-Sized Enterprises
- Standard Curriculum Vitae
- Chief Information Officer (CIO)
- Official Journal of the European Union (OJEU)
- Dedicated e-mail address
- Directorate General for the National Heritage
- National Agency for Radioactive Waste
- Economically Active Population Survey
- Local entities
- School for Industrial Organisation
- Basic regulations for public-sector workers
- National Mint
- Federation of Associations of General State Administration Senior Officials
- Spanish Sports Federations
- Autonomous Community Sports Federations
- Spanish Airports and Air Navigation Authority
- Foundation for the development of occupational training in coal mining areas
- Ibero-American Foundation for the Promotion of Marine Culture and Science
- Spanish Aquaculture Observatory Foundation
- Digital Clinical History
- Astrophysical Institute of the Canary Islands
- Institute of Fiscal Studies

- Institute of Oceanography
- Institute for Defence Housing, Infrastructure and Equipment
- Spanish Institute of Foreign Trade
- Spanish Geological Survey
- National Institute of Public Administration
- National Institute for Agricultural and Food Research and Technology
- National Social Security Institute
- National Institute for Aerospace Technology
- Institute for Energy Diversification and Saving
- Marine Social Institute
- General Intervention Board of the State Administration
- Inventory of State Public Sector Bodies
- Research, Development and Innovation (R+D+i)
- Budgetary Stability and Financial Sustainability Act
- Public Administrations and Common Administrative Procedure Act
- Ministry of Agriculture, Food and the Environment
- Ministry of Foreign Affairs and Cooperation
- Ministry of Economy and Competitiveness
- Ministry of Finance and Public Administration
- Ministry of Health, Social Services and Equality
- New Electronic Case Record
- Tax Identification Number
- Organization for Economic Cooperation and Development
- National Vehicle Fleet
- Small and Medium-Sized Enterprises
- Average period for payment to suppliers
- Plan for the Rationalisation of National Real Estate Assets
- Platform for Government Contracts
- Data Intermediation Platform
- Gross Domestic Product (GDP)
- National Reform Programme
- General Access Point
- Public Sector Contract Register
- Electronic Power of Attorney Register
- Official Register of Tenderers and Classified Companies
- Treasury and Financial Policy General Secretariat
- Social Security
- Secure Online Notification Service
- Public Employment Service
- Information Applications and Networks System
- National Health Service
- Maritime Safety and Rescue Agency
- Railway Logistics and Transport Company
- Broadcasting Programmes and Commercial Operations Company
- Information and Communication Technologies (ICT)
- General Social Security Treasury
- Consolidated Public Sector Contracts Act
- European Union (EU)
- General Union of Workers
- Open University





# Executive summary





## 0. EXECUTIVE SUMMARY

It has been a year and a half since the Spanish Government launched an ambitious reform project aimed at exiting the worst economic crisis of recent decades, correcting the imbalances halting growth and laying the proper foundations for launching a new cycle of economic prosperity and employment for Spaniards.

The Labour Reform, the Budgetary Stability and Financial Sustainability Act, the restructuring of the financial system, together with other measures currently underway such as the Draft Bill on Support for Entrepreneurs and reform of the educational system, to name some important examples, represent unprecedented transformations in each of the respective areas of government.

The creation of the Commission for Public Administration Reform (CORA) follows this ambitious reformatory course to perform the most meticulous ex-ray examination of our public sector undertaken in recent decades.

The report emanates from the experience and knowledge accrued in the administration and civil service. In the past 35 years, these bodies have taken giant steps in excellence, becoming, in many domains, a model for other countries to emulate. With the difficulties our country currently faces, we can state unequivocally that Spain has a good administration.

There are, however, deficiencies and overlaps in jurisdictions that must be remedied. A competitive economy demands modern, transparent and agile public administrations. It demands a public sector free of overlapping, duplicate functions and unnecessary expenditures. It requires public administrations that are devoted to the service of citizens and businesses, on par with the most efficient systems in our context.

It is upon these assumptions that CORA was established. The project initiated by CORA does not culminate in the presentation of this report, but rather, opens the door to undertaking actions with fixed completion dates in order to simplify procedures, apply new technologies, reduce administrative costs to citizens and businesses and avoid overlap and duplication of work with other administrations. CORA has organised this task through the creation of sub-commissions to address overlap, simplification, common services and resource management and institutional administration. Together with horizontal measures, the report includes proposals from each of these bodies.

CORA sought collaboration from society to design these projects. An advisory board was created including the Office of the Ombudsman; business organisations and public employee representatives: Workers Commissions (CC.OO.), General Workers Union (UGT), Independent and Civil Service Central Union (CSIF), Spanish Federation of Associations of Senior Officials of the State Administration (FEDECA), Spanish Confederation of Business Organisations (CEOE-CEPYME); the Consumers and Users Council; Self-employed Workers Association; Family Business Institute; National Council of Chambers of Commerce and the Spanish Association of Consulting Firms, all of whose valuable contributions have allowed for the production of numerous proposals. Moreover, **a citizen's participation suggestion box was opened, receiving 2,239 suggestions** on administrative duplication and simplification, suggestions which have also proven very useful for detecting areas in need of improvement.

In its report, CORA put forth a total of **217** proposals for measures, **139 of which will affect the State and Regional Governments (Autonomous Communities) and 78 that will exclusively affect the General State Administration (GSA)**. Of these 217 measures, eleven are general and horizontally applicable to all areas of public administration; 118 aim to eliminate overlapping both amongst regional governments and within the State; 42 eliminate obstacles, simplify procedures and facilitate citizen access to the administration; 38 improve service and common resource management and eight rationalise the institutional administration, both in regulatory terms as well as by dissolving or merging 57 state public entities.

As we have stated, the work undertaken by CORA falls within a public administration reform process, whose main lines are described herein following some data on the size and structure of the Spanish public sector.

## 1. SPANISH PUBLIC ADMINISTRATION

Any reform process begins with an analysis of the true dimension of the Spanish public sector and its structure.

The most widely used indicator for measuring the weight of public administrations in the economy is **the proportion of non-financial expenditure over gross domestic product (GDP)**. According to this indicator, Spain has remained far below the European Union average.

According to European Commission data from 2012, Spain ranks within the ten European Countries with less public spending in percentage of GDP (43.4%) compared to a Eurozone average of 49.9%, differing greatly from the levels of large EU economies such as France (56.6%), Germany (45%), United Kingdom (48.5%) and Italy (50.7%).

Nevertheless, the increase in public spending has been particularly intense in recent years. **Between 2005 and 2011 public spending increased in terms of GDP by 6.8 percentage points, going from 38.4% in 2005 to 45.2% in 2011.**

**The evolution of public revenue in percentage of GDP in Spain and the Eurozone** between 1995 and 2013, according to European Commission data, shows a sharp decrease in public revenue in Spain, presenting a level of public revenues in 2012 of 36.4% of the GDP, nearly ten percentage points of GDP below the Eurozone average, **being Spain the Eurozone country with the lowest public revenue as a proportion of GDP following only Ireland (34.6%) and Slovakia (33.1%).**

The size of the Spanish administration in terms of public employees has witnessed a sharp increase in the last ten years. It is particularly remarkable to note that since the beginning of the crisis, between the third quarter of 2007 and the third quarter of 2011, public employment increased by 288,700 workers, according to the Labour Force Survey (LFS). However, **from the third quarter of 2011 to the first quarter of 2013, public employment was reduced by 374,800 workers. In this period, public employment fell by 11.6% compared to the 7.7% employment decrease seen in the private sector.**

As a consequence, by analysing the level of public revenue and expenditure in our country, we can conclude that the **Spanish public sector is relatively small in comparison to our European Union partners.**

If we examine the expenditure structure from a functional viewpoint with figures from the public administration budgets for the 2012 fiscal year, **social and basic public service expenditure amounted to 65.9% of public expenditure and nearly 30% of the GDP, without counting the interest on the debt. Regarding personnel, in the General State Administration and the regional governments, only 25% of public employees are within strictly administrative structures with the remainder working in health, education, security, defence and justice services.**

**Regarding territorial distribution, nearly half of public expenditure is managed by the regional governments and local entities.** According to the latest available data from the OECD, comparable to those of other countries with decentralised structures, the breakdown of expenditure in 2011 was as follows: Central Government: 21.6%; Regional Government: 34.3%; Local Government: 12.3%; and Social Security: 31.9%.

The decentralisation process produced a change in the distribution of public employees within the administrations. According to data from the Central Personnel Registry, **between 1982 and 2012, employees of the General State Administration were reduced to nearly one-fourth; those of the regional governments—practically non-existent in 1982—multiplied by 30 and those of the Local Entities grew nearly fourfold.**

**The decentralisation of expenditure and public employment, which occurred at the same time as the conferral of powers,** came about quickly. Both have also increased quickly within the territorial entities. In many cases, growth was a response to the creation of administrative structures in areas covered by the General State Administration, which created duplicate actions in other public administrations.

**Spain is, therefore, one of the OECD countries with the most highly decentralised expenditure.**

For these reasons, any administrative reform must also extend to Regional Governments and Local Entities.

## 2. REFORM OF THE SPANISH PUBLIC ADMINISTRATIONS

From the first actions in December 2011, the public administrations reform initiated by the Government of the Nation has been inspired by the following principles:

### A. BUDGETARY DISCIPLINE AND PUBLIC TRANSPARENCY

The new **Budgetary Stability and Financial Sustainability Act**, the Government's first reform adopted in its term, is the reference framework for budgetary consolidation for all public administrations.

The **fundamental novelties** enshrined in this law are its **application to the whole of the public administrations, improved transparency on all administrative levels** and the **capacity of control over the execution of the budget**, sustained by new instruments and preventive and corrective measures.

This new legislation is now the overarching text for all public administrations. Therein, it is stated that **structural balance must be maintained, allowing the administrations a structural deficit of up to 0.4% of GDP** when long-term budgetary structural reforms are carried out. The positive results of fiscal consolidation reached by all public administrations in 2012 were made possible due to the implementation of this new Budgetary Stability and Financial Sustainability Act.

The law seeks not only to reinforce the idea of stability for all public administrations in a given situation, but on an on-going basis. **Automatic precautionary measures** have been envisaged to this end that did not exist in the previous administration as well as **corrective measures** for cases of non-compliance ranging from fines to visits of review delegations to the non-compliant administration.

Public administrations showed a **deficit in 2012 in terms of national accounts of 6.98% of GDP not including resources transferred to credit entities within the bank restructuring framework, as compared to the 8.96% of GDP deficit shown in 2011**. This represents a very significant correction in a situation where there has been a heavy loss of activity.

Not counting the expenses linked to bank restructuring, that year the central administration reduced its deficit by one percentage point of the GDP, taking it to 4.1%.

**In 2012, the Regional Governments placed their deficit at 1.76% of GDP. Local corporations** (City Councils, Provincial and Island Councils, other bodies) **reduced their deficits by 0.3 percentage points in 2012, taking them to 0.15% of GDP**, complying with the goal set for 0.3% of GDP with ample margin.

On a regional level, **in 2012 all regional governments presented their economic and financial rebalancing plans for the 2012-2014 period** with measures to increase revenues and reduce expenditure in order to comply with the budgetary stability course established.

Savings reached 12.47 billion euros. **With these fiscal consolidation measures, the deficit has been cut from 3.31% of GDP shown in 2011 to 1.76% in 2012.**

On their part, local corporations complied with the deficit objective set in 2012 (0.3% of GDP) with ample margin, managing to reduce their deficit to 0.15% of GDP. The 2700 adjustment plans presented by local entities that joined the Supplier Payment Plan played a key role in the achievement of these results. **The measures adopted by local entities accounted for an increase of €1.1 billion in revenues and a reduction of €1.5 billion in expenditures in comparison to 2011.**

At the same time, on all levels of the administration, **restructuring and rationalisation has been put in place for national public sector companies and foundations.** In the case of the regions, this has translated into:

- Rationalisation of the number of instrumental public entities in the Regional Governments.
- Reduction of staff in public sector companies and foundations on a regional level.

Within the regions, by 1 January 2013, 383 entities were to have been eliminated and 75 others created, with 227 entities in status of imminent elimination, in compliance with the initially foreseen commitment (535 net entities as opposed to the target 515). The plan is still in implementation stages. The net number of entities to be eliminated has been raised by 193 units, to reach a total of 708 entities to be eliminated in net terms.

Additionally, the **Draft Law for Transparency, Access to Public Information and Good Governance** envisages a three-pronged scope of action: **increase and strengthen transparency in public activity** through active publicising obligations for all administrations; **acknowledge and guarantee access to information** regulated as a right with an ample scope of both subjectivity and objectivity; and **establish obligations for good governance to which public authorities must adhere** and the legal consequences derived of non-compliance with them. This lays down the obligation of accountability for all those undertaking activities of public relevance.

Significant efforts are already being made to increase transparency in public accounts, particularly through the **improvement of the statistical quality of budgetary figures for territorial administrations**, the regions and local entities. The most significant development is that **for the first time, in 2013 monthly figures on the budgetary implementation of all public administrations, in terms of national accounts, are made available, with the exception of local corporations, which are published quarterly.** This facilitates supervision of public accounts on all levels of the administration.

The Government has begun to arrange for the creation of an **Independent Fiscal Responsibility Authority** that will control the strict compliance with the principles of budgetary stability and financial sustainability on all levels of the administration; carry out an **ongoing evaluation of budgetary cycle, public debt and macroeconomic projections and analyse the creation and implementation of fiscal policy to early detect possible detours from the objectives pursued.**

CORA considers it necessary, within this process, to create an **Information Hub, putting an end to the current scattering of public information sources for budgetary, financial and economic affairs that** apply different criteria for providing and submitting data. This hub will be located on the Ministry of Treasury and Public Administration Services web portal ([www.minhap.gob.es](http://www.minhap.gob.es)) and fed with content provided by those in charge of data. To facilitate this, publication criteria will be made homogeneous and a system for governance will be established that will allow constant and complete updating of the content on the hub. The creation of this hub will mean the **reduction of search time; quantitative and qualitative improvement of the department's economic, budgetary and statistical information; it will increase the inter-operability and the reuse of this data and prevent publication overlap.** All of these measures will generate **greater transparency and confidence in the** economic and financial information provided by administrations.

## *B. RATIONALISATION OF THE PUBLIC SECTOR. ELIMINATION OF DUPLICATED, INEFFICIENT OR UNSUSTAINABLE BODIES AND ENTITIES*

- a) Elimination of overlap with the Regional Governments.

The configuration of a State comprised of self-governing "Autonomous Communities" presents undeniable advantages common to any decentralised State of regions. It entails the existence of a

public administration that is closer to citizens which, in conjunction with the solidarity principle enshrined in our Constitution, allows Spaniards access to basic public services in conditions of equality across the entire territory. However, the particular configuration of the Spanish regional system gives rise to overlap and inefficiencies that hinder the full functioning of the principle “one administration, one power”.

Regional Governments can gain efficiency by exercising their ability to self-organise, which allows them to decide on matters regarding reducing or eliminating administrative agencies and bodies. What we have observed recently—and so recommend in the report—is that some of the regions have considered eliminating entities or reducing the size of even those with special institutional relevance such as legislative assemblies or Offices of the Ombudsman.

Contributions to the improvement in efficiency of exercise of regional power can also come from the State. **The proposals listed along these lines are consistently based on the same premise: the ability to continue rendering the same service with equal or better quality at a lower cost.** Because of that, when a proposal of eliminating a specific body is made, it is based on the analysis of its current structure and expenses, so that if these can be greatly reduced, then the same objectives can be reached by other means.

In the area of the Sub-Commission on Overlap within CORA, **118 measures have been brought forth, seven of which are horizontal in nature and 111 are sectoral, aimed at achieving the principle of “one administration, one power”.**

**Joint planning** and **comprehensive management** are mechanisms reinforced in those areas where, although overlap hasn’t been detected *per se*, there are sectoral and territorial powers that do coincide.

There are also plans **to interface databases and public State and regional registries in different fields.** This is of special relevance, on the one hand, for obtaining certification to carry out an activity across national territory; and on the other, to access information on public activities in each sector (assistance benefits, grants, entrepreneurial assistance, amongst others); and lastly, to ensure adequate knowledge required by authorities about the procedures being processed in other areas, especially important with regards to judicial affairs.

After analysing the cost that certain services or activities entail for regional administration and studying the possibility that these be rendered by a State body with equal or improved quality, suggestion is made that functions carried out by **regional bodies can be taken over by State bodies.** This is the case for the powers granted to audit authorities; data protection agencies; administrative hiring advisory boards; administrative tribunals of contractual appeals; university level evaluation agencies; regional energy agencies; meteorology agencies; airport inspection agencies; opinion surveys; cartography institutes or service agencies; competition authorities; amongst others.

Moreover, other measures are aimed at improving the effectiveness and efficiency by **sharing resources amongst different administrations ranging from representing offices abroad to roadway conservation, public employment training programmes and management of educational centres.** In this regard, there are especially noteworthy reforms related to **public procurement**, which, in addition to boosting efficiency, will mean improved services available to citizens and businesses.

Although of lesser economic consequence, the question is also raised of the need to **analyse existing observatories**, preventing a proliferation of them with the aim of improving their functioning and performance. The report already recommends the elimination of 90 observatories in different fields because they overlap with others.

Improved coordination between different public administrations has an obvious effect on citizens to the extent that it means **better services for them.** In order to continue with CORA’s analysis, a **Manual for Rationalisation and the Elimination of Overlaps will be published. It will allow for ongoing eliminations and the prevention of these overlaps arising in the future.**



- b) Rationalisation of the institutional administration and national public-sector companies and foundations.

From the beginning of its legislative term, the Government has made numerous decisions to rationalise the institutional administration, public-sector companies and foundations, reforming the legal status applicable to the heads of public companies and bodies and adopting entity-reducing schemes.

The recent Law 3/2013 of 4 June on creating the **National Markets and Competition Commission includes the elimination of eight regulatory bodies**, providing better efficiency and legal certainty for economic agents.

The additional eighth provision of Royal Decree-Law 3/2012 of 10 February (procedures followed the decree, and it was passed into Law 3/2012), providing urgent measures for labour market reform, limits the **compensation for termination of labour contracts and senior officer contracts** for senior posts in State public-sector entities; it prohibits payment of this compensation to executive officers who are civil servants and can return to their former post after dismissal; and it determines the establishment of a **retributions schedule** for executive directors of State commercial enterprises (this distinguishes between basic and complementary retribution —a position-related bonus and a fluctuating bonus).

Royal Decree 451/2012 of 5 March regulates the **retribution scheme for top executive officers and directors in public-sector companies** and other State public-sector entities; it limits **the maximum number of members on the administrative council or board of governors of each entity**, its organisational structure (maximum and minimum number of directors) and the maximum retributions of chief officers.

By Council of Ministers Decision of 16 March 2012, the **Plan for the Restructuring and Rationalisation of the National Public Business and Foundations Sector was approved, affecting 86 public-sector companies and foundations either through dissolutions, mergers, divestment or closings.**

CORA has made this subject one of the lynchpins of the reform, through the work of the Sub-Commission for Institutional Administration. First and foremost, to bring utmost clarity and consistency to the legal framework regulating the organization of the Spanish public sector, CORA deem it necessary to pass a new **law** to provide a complete and codified text for administrative organisation, reforming and codifying the **Public Administrations and Common Administrative Procedure Act (LRJAPPAC).**

The part of the new law devoted to **Institutional Administration** will establish **criteria for identifying each type of entity, its economic and financial oversight system and what procurement and employment schemes it will have.** It will also envisages, with a view to unifying efforts, the representation of different public administrations in one sole entity. **The creation of any new body or public entity should rigorously justify its reasons for existence and include an analysis of possible overlapping and of the human, material and financial resources allocated to run it. These entities will be evaluated periodically and in the case the reasons or resources substantiating their existence no longer apply, the entity will be eliminated.**

In order for the typology of existing public bodies to be clear and precise, this proposal will take into account the entities existing in both the regional governments and local entities that may have similar characteristics but different names, and **a basic but common framework** will be established to organise the current dispersal and variety that exists.

Moreover, in order to comply with Article 11 of the LRJAPPAC, where it discusses prohibiting the creation of new bodies that overlap those existing unless at the same time the existing bodies are eliminated or their powers limited **the data contained in the Inventory of Entities Reporting to Regional Governments must be entered into the INVEspe, or State Entities Registry.** This way, **before any public administration creates a new entity, there must be proof that there is no overlap with another entity.**

In addition to this regulatory modification, CORA has conducted analysis of existing public entities and bodies within the General State Administration, **assessing whether they comply with the criteria justifying their existence as individual entities with separate legal personalities,** and are therefore granted the



autonomy to carry out the activities entrusted to them. The following measures regarding the General State Administration have been put forth as an outcome of these analyses:

- **Regional bodies to be eliminated, whose means and functions** will be taken on by the corresponding Ministerial organisation: the Armed Forces Horse Breeding and the Spanish Youth Council.
- **Regional bodies that merge and become part of other existing bodies** with broader aims, contributing greater resources and activity: El Pardo Hydrodynamic Research Centre (becomes part of the National Institute for Aerospace Technology); Military Constructions Services (becomes part of the Defence Institute for Housing, Infrastructure and Facilities); and the National Consumer Institute (becomes part of the Spanish Food Security and Nutrition Agency).
- **Regional body that assumes on the functions and means of a directorate centre** until now attached to the Ministerial structure: Women's Institute, which takes on the functions of the General-Directorate for Equal Opportunities.
- **Managing entities and common services of the Social Security system that merge into one sole entity:** National Social Security Institute (INSS), Marine Social Institute (ISM) and the General Social Security Treasury (TGSS).
- **Elimination of occupational accident and related illness insurance consortiums.**
- **Consortiums to be eliminated:** Solar Decathlon Consortium; Consortium for the Auditorium of Málaga; Zaragoza Climate Change Research Institute Consortium (I2C2); the unification of the eight Networked Biomedical Research Centres (CIBER) into one legal personality and the centralisation of the economic and administrative management, to prioritise and optimise research investment.
- **Foundations to be eliminated,** whose means will be embraced within the ministerial organisation, other public entities or foundations: Colegios Mayores Foundation MAEC-AECID becomes part of the School for Industrial Organisation (EOI) Foundation; Latin American Foundation for Oceanography Culture and Science (FOMAR), will be closed and liquidated; the AENA Foundation will become part of the Spanish Railway Foundation within the new Transport Foundation; the Spanish University International Projection Foundation (Universidad.es) becomes part of the Autonomous Body for European Education Programmes; the Juan José Workshop Foundation will be closed and liquidated; the National Glassworks Foundation, whose management will be taken on by the EOI under the necessary conditions; the Economic and Trade Studies Foundation (CECO) becomes part of the Spanish Foreign Trade Institute (ICEX); the Foundation Centre for Excellence in Applied Information Technology (CENATIC) becomes part of the Public Entity Red.es; Energy City Foundation (CIUDEN), is partially adopted by the Energy Diversification and Saving Institute (IDEA), with the exception of its museum functions; the Spanish Artisanal Innovation Foundation becomes part of the EOI; Foundation for the Development of Vocational Training in Coal Mining Areas (FUNDESFOR); the Foundation for Spanish Aquaculture Observatory (OESA) becomes part of the Biodiversity Foundation or the entrepreneurial organisation; and the ENRESA Foundation becomes part of the ENRESA corporation.
- **Foundations that cease to be considered public foundations:** Spanish Foundation of Aeronautics and Astronautics, Foundation Sea Museum of Galicia, Canary Island Las Palmas Ports Foundation and the General Foundation of the National Distance Education University (UNED).
- **Foundation that changes ministerial affiliation** and if it is the case, protectorate: the Foundation for Victims of Terrorism comes under the Spanish Ministry of the Interior.
- **Foundation that becomes a public body** and could take over what means the regional governments have at their disposal in the same subject matter: the National Quality and Accreditation Agency Foundation (ANECA).

- **Public entity to be eliminated:** Naval Construction Sector Management (**the ministerial structure will assume its functions and incorporate its resources**).
- **Corporations to be eliminated:** In addition to those affected by the aforementioned Council of Ministers Decision, plans exist for the extinction of the Railway Logistics and Transport Corporation (LTF); Port Gomera Loading Company, the Hierro Island Port La Estaca Loading Company; the Radio Broadcasting Programmes and Operations Corporation (PROERSA); and La Almoraima Corporation.
- **Regional bodies and State agencies that will pool their services:**
  - i. **Training:** Centre for Legal Studies (CEJ), Institute of Fiscal Studies (IEF), National Public Administration Institute (INAP) and the Centre for Political and Constitutional Studies (CEPCO).
  - ii. **Research:** Spanish Research Council (CSIC); Centre for Energy, Environmental and Technological Research, (CIEMAT); National Institute for Agricultural and Food Research and Technology (INIA); Spanish Oceanography Institute (IEO); Spanish Geological and Mining Institute (IGME); Carlos III Health Institute; and the Astrophysical Institute of the Canary Islands (IAC).

c) Local Reform.

The **Draft Bill for the Rationalisation and Sustainability of the Local Administration clarifies** municipal jurisdictions to prevent duplications of functions and submits the distribution of “misplaced powers” to efficiency criteria, which will mean a **savings of at least € 7.1 billion for the 2013-2015 period**. The envisaged measures are:

- **For the first time, municipal powers are clarified under law, eliminating duplicate and misplaced powers** in order to adapt the local administration to the principles of budgetary and financial sustainability.
- **A transitional period of five years will be established for the stewardship of health and education affairs to change hands.** These will pertain exclusively to the regional governments, with the corresponding financial restructuring.
- Territorial associations and local entities that do not present balance sheets within three months will be dismantled.
- **The role of municipal comptrollers will be reinforced,** as local administration civil servants with nationwide certification.
- Economic initiative will be boosted by **reducing the administrative authorisations necessary to launch an economic activity.**
- **The salary of members of local corporations will be defined yearly in the General State Budget** according to the population of the township with a ceiling of a Secretary of State’s salary.
- **The number of temporary staff (personnel of confidence) and full-time public posts will be reduced according to township population.**

## C. IMPROVED EFFICIENCY OF THE PUBLIC ADMINISTRATIONS

a) Public employment measures.

Together with the urgent measures taken in the face of the current situation to reduce public sector expenditure in 2012, the Government has approved **other measures of a structural nature**, most of which

are included in Royal Decree Laws 3/2012 and 20/2012, and are similar to those which in other countries are considered essential to the administrative reform process. Most noteworthy of these are:

- **Freeze on Public Employment Offers** for 2012, 2013 and 2014, setting a general replacement rate of workers at zero and a 10% rate restricted to certain areas such as fraud prevention and selected services.
- Legal authorisation for dismissals due to **economic, technical, structural or production-related causes** within the Public Administration, for non-civil servant staff.
- **Reduction of personal days** and elimination of extra free days off.
- **Modification of the conditions for access to and maintenance of temporary incapacity.**
- **Modification of the regular retirement age**, raising it from 65 to 67 years. The Law introduces a transitional period of 14 years to progressively apply the measure.
- Extension of the **workday to a minimum, in the public sector, of 37.5 hours per week.**
- **Sector-based public employment measures.**
- **Plan to reduce absenteeism.**
- **Modification of the incompatibilities regime.**
- **Modification of the union leave regime.**

In addition to the measures outlined in previous paragraphs, the Secretariat of State for Public Administrations is winding up the design of the measures that will enable the **development of innovation and efficiency strategies in the configuration and management of public employment.** The most relevant of these, described in the CORA report, are manifest in:

**Determining the legal scheme for staff** that render public services, with the aim of differentiating contract staff from civil servants; **formation of ranks of staff pools** who, because they perform critical functions for public service, carry out these duties in a specific manner, facilitating horizontal promotion for the remainder; **reconsideration of temporary staff**, so that the discretionary nature of the appointment will take into consideration certain experience and job training requisites, as well equalising the number of temporary staff in similar units; design of tools for **measuring workloads** that facilitate the efficient allocation of human resources and generally establishing **performance assessment mechanisms**; design of better mechanisms for **internal and inter-administrative mobility** for the most efficient use possible of the resources available to each administration, channelling individuals working in sectors considered to have excess staff into those lacking staff; extending these measures to different territorial administrations as well.

b) Implementation of the efficiency assessment system.

CORA proposes to spread these systems already up and running in certain State General Administration units across the board to allow for the measurement of administrative unit workloads, calculate average processing times for procedures, assess the productivity of each unit and compare it with its counterparts. This will allow for the reallocation of resources and adjustment of retributions. With this, we will be able to correct the **delays in processing procedures** in the processing units.

**Processing times and variations in them can be posted on the web sites of these bodies for those matters that affect citizens the most.**

c) New procedures for drawing up chapters TWO and SIX of the General State Budget.

The quest for better allocation of budgetary resources for common goods and services and real investment has led CORA to recommend introducing measures into the methodology for drawing up budgets in chapters TWO and SIX. These measures suggest that **activities similar in nature** that are managed by

different departments **be budgeted with more efficient standards** deduced from either the best practices observed or from theoretical analysis, maximising the value obtained from the economic resources utilised. This will mean introducing **analytical criteria for judging whether the proposed quantity budgeted for a specific expense (i.e., energy, maintenance, supplies) is on par with the optimum management of the service or delivery (i.e., surface space, number of employees)**, in such a way that the budget is no longer established according to that of the previous year with its respective supplementary restrictions, but rather in accordance to what expenses are truly required in each line item.

d) Draft Bill to Encourage Electronic Invoicing and the Creation of Accounts Registry.

**The legislation will be applicable to all administrations**, including institutional bodies, regional governments and local entities. It includes actions aimed at both suppliers and public administrations.

This bill strives to **expedite procedures for supplier pay-outs** by way of **e-invoice** in both the public and private sector, moving further in the direction of European initiatives on the subject. A compulsory administrative **registration system** will be implemented **for invoices issued by suppliers to any public administration. Additionally, a general reception point will be created where e-invoices can be submitted by suppliers and processed electronically.**

With these measures, accuracy will be gained in the existing **invoices pending payment; supervision will improve regarding compliance with the budgetary stability and financial sustainability goals** and there will be a follow-up on the **average payment schedules to comply with legislation against delays in administrative payments.**

e) Management of Services and Common Resources.

The successful experiences of big multinational corporations have served as a guide for the proposals laid out by CORA on these subjects.

Taking from these experiences as well as the outcomes of decentralisation processes of other States, an analysis has been conducted of the outsourcing contracted by different ministerial departments that can be folded into centralised contracts **aimed at reducing cost.** Additionally, we have taken into account services that can be managed in a centralised manner, proving to be not only cost-cutting but also more efficient.

The measures put forth by CORA have been designed for the General State Administration, but this does not preclude the adoption of them by other territorial administrations wherever applicable. In cases where this is not feasible, these other public bodies can import and replicate the new management models that are described as follows. Of the areas that have been subject to evaluation, the following can be highlighted:

- **Digital processes.** The measures suggested in this area focus on a **rationalisation of the current organisational structures within the information and communication technologies** of the General State Administration, **from a resource as well as governance-based perspective. With the consolidation of infrastructures and common services we strive for** the most efficient use of technological resources while offering better quality services. **Standardisation** will be crucial to drive the sharing and **re-use of sector-based infrastructures and services** that will remain outside the consolidations aforementioned. The consolidations proposed will only be viable in a new organizational framework where the figure of Chief Information Officer (CIO) of the General State Administration will head this process. **The CIO will elaborate the General State Administration's technology and communications strategy in collaboration with the Board of Directors, in the framework created by a new Technologies and Communications Agency.**

- **Real estate.** Management of the State properties at the outset of 2012 had **shortcomings** such as **lack of reliable and updated information** on the number of properties, **widely scattered administrative offices, high rents, low occupation and** some property not in use.  
An inter-ministerial body coordinated by the Directorate-General for National Real Estate Assets designed corrective measures, some of which are already in force, involving the **identification of the total number of properties** owned by the General State Administration, the reduction of rent costs, optimisation of space in terms of occupation, increase in public revenue and the construction of facilities that will be self-financing on a short term.
- **Liquid Assets.** Procedures have been examined regarding expenditures and revenues in the public body coffers with the aim of reducing expenditure and optimising revenues at the same time.  
We have identified areas for improvement such as the centralisation of payroll and treasury accounts, improvement of mechanisms for collecting tax and non-tax revenues, a better synchronisation of General State Administration payment schedules to incoming revenues, and improved management of treasury balances.
- **Procurement.** One of the fruits of CORA's efforts is the implementation of a reform process for procurement of supplies and services to the different ministerial departments. It strives to **improve on the weak spots identified such as the proliferation of procurement bodies, lack of centralised purchases, varying management methods, and quality levels in the products delivered; in general, the lack of unified criteria.**  
CORA has **engineered corrective measures: establishing a centralised directorate, reducing the number of procurement bodies and unifying criteria for quality standards.**
- **Notifications.** Currently, both postal and electronic notifications exist. The cost of paper notifications is remarkably higher for the General State Administration. Several regulations existing since 2007 have covered the possibilities of establishing a **framework for administration-citizen interchange by electronic means.** With the objective of establishing this interchange while reducing costs and expediting processes with guaranteed security, it is proposed that **e-notification gradually extend to all General State Administration centres**, using the electronic address designed for this purpose and the digital networks of each centre to transmit notifications by correspondence. For those notifications that must be sent on paper, the **use of shared printing and mailing centres** is recommended.
- **Public Service Vehicle Fleets.** A count was taken of the number of vehicles allocated to different ministerial departments, with the exception of the Armed Forces and of representational vehicles belonging to the **State public service vehicle fleets.** Although the latter agency has recently undergone a **restructuring process**, one of CORA's first endeavours, which has already reported considerable savings, this has not been the case for the other departments. The Commission proposes **determining what vehicles can be done away with due to infrequent use and conditions; centralising management supervision** in the departmental under-secretariats; contracting **group insurance policies** and distributing user instructions for using fuel cards, group maintenance contracts and repairs, amongst others.
- **Printing Services.** We have observed the **lack of overall unified management** regarding printing services available in the General State Administration as well as the required upkeep of out-of-date publishing and printing facilities with the expenses it entails. Since there is no unified management of document print-out in the General State Administration, the different organisations that do not have their own means, and those that have them but find them insufficient or obsolete, are forced to outsource their publishing and printing needs.  
As a consequence, actions to **rationalise these services** are encouraged and will be initially adopted on a departmental level through an assessment of their needs, capacities and costs then proceeding to the **elimination of all of obsolete or unnecessary means. This will also improve**



**the use of the General State Administration's large print shops, especially the Official State Gazette printing house.** The Official Publications Coordination Board would be appointed managing editor of the General State Administration publishing programme and would give the authorisation for outsourcing publishing and printing jobs. In a later phase, after the appropriate adaptations are made, the Official State Gazette would be in charge of publishing and printing the General State Administration publishing programme along with other large jobs that different ministries and agencies are unable to cover with their own means.

- **Aviation and Maritime Capabilities.** Currently the State's aviation and maritime capabilities are diversified into different General State Administration bodies such as Customs Surveillance Service, the fire brigades, the Maritime Safety and Rescue Agency (SASEMAR), the Guardia Civil Corps and scientific seafaring vessels, amongst others. This **proliferation and duplication of aviation and maritime units** has brought about **exorbitant operational costs** due to the scattering, outsourcing and atomisation of resources required to maintain and operate them while the Air Force and Navy have adequate human resources and facilities to cover the aforementioned tasks and have been doing so on different occasions through specific collaboration agreements with different agencies.

Consequently a proposal has been tabled for a move **toward unified maintenance and, where necessary, operation of aviation and maritime capabilities of the General State Administration by the Air Force and Navy, under the governance and supervision of the competent agency,** by installing case-specific **collaborations** to manage them.

Moreover, with a view to maximising synergies and savings deriving from the proposal, it is deemed that advances should be made toward the **standardisation and unification of aviation and maritime capabilities** to be acquired in the future, especially regarding those that can possibly provide multiple functions, benefitting several state agencies at the same time.

## f) Reform of the Grants Act.

Having observed deficiencies in the current regulations for grants, CORA proposes a modification of the law, taking measures that will allow to:

- Strengthen the **transparency for grant funding** and competitiveness in the selection of projects, financing the expenses strictly necessary and demanding a minimum of private contributions. This measure will affect the projects in competition and does not include, in any case, personal financing such as social aid or scholarships.
- Establish **ceilings for certain modalities of public financing for private expenses.**
- **Eliminate duplication between the State and Regional Governments.** The new legislation must include Constitutional criteria developed by the Constitutional Court on the distribution of powers regarding grants. These will bring about a better **demarkation of jurisdictions** between the public administration agencies and entities that operate in the private sector.
- The different administrations' grant databases will be improved, ensuring the **automatic interface of the different regional and local databases with the National Grants Database.**
- This database will serve as an **advertising system for the grants** awarded, promoting greater transparency and simplification of processes, as it saves the granting agency from re-directing the paperwork to the corresponding official newsletter.
- **Interface of the National Grants Database with tax information databases.**
- **Clarification of the role of collaborating entities, rendering administrative procedures more flexible,** while at the same time maintaining the necessary rigour in these matters.

- Boosting commercial exchange and economic dynamism in the private sector by including a measure in the General Grants Act that **reinforces compliance with the Law on Delayed Payment on outstanding payments to individuals** when the operations are covered by public funds.
- Lastly, there will be a **monitoring procedure including subsequent repayment**. With this model, the General State Comptroller will be granted the power to claim repayment deriving from monitoring done by the supervisory bodies. This solution will help to reduce the administrative load and create a fluid chain of monitoring and repayment procedures with a sanctioning process, promoting greater simplification and legal certainty. This model will be equipped with an agile and effective instrument to combat fraud.

## D. THE ADMINISTRATION AT THE SERVICE OF CITIZENS AND BUSINESSES

The Administrative Reform taken on by the Government seeks fundamentally to facilitate the Government's engagement with citizens and businesses. With this in mind, CORA has analysed and formulated several initiatives aimed at simplifying paperwork and procedures, eliminating charges and facilitating access to information for those who interact with the public sector.

### a) Single Market Guarantee Act.

The **Single Market Guarantee Act** analysed in the CORA plenary seeks to **simplify the administrative red tape to accessing and engaging in entrepreneurial endeavours in different regions and ensure the free circulation of goods and services throughout Spanish territory**. The Act is based on the mutual trust and responsibility of all administrations through ex ante and ex post collaboration for control and supervision. The Act **sets forth the principle that the certification needed for conducting an activity or trading a product given by a regional authority is valid across national territory. It envisages mechanisms for public administration cooperation on elaborating regulations** that ensure coherence.

Within the efforts to reinforce commercial activity, we can highlight measures for liberalisation included in **the Royal Decree-Law 19/2012 of 25 May on urgent measures for relaxing restrictions on trade and certain services**. Under this legislation, opening permits for commercial spaces under 300 square meters have been eliminated and replaced with liability declarations. Another measure is relaxed restrictions on opening hours and special offers, reducing administrative intervention and red tape. In the **forthcoming law for Support for Business and International Engagement** there will be a higher threshold for usable display and open sales space, from 300 to 500 square meters, which will eliminate municipal licenses.

### b) Codification of the Law.

**The OECD report on the management and rationalisation of regulations in Spain in 2000** already pointed out that the review of legislative frameworks was not systematic and that in the legal tradition there were no tools such as compulsory periodical final revisions or expiration dates.

The **2010 Report** on the same subject shows that it is difficult to achieve simplification in Spain and that this undermines easy access to the legal system, which has an impact on clarity and certainty. The OECD emphasised particularly that in Spain the process of consolidation and simplification of regulations is hindered by the **complex nature of the Spanish legislative system, which requires the involvement of regional governments and that overlapping legislation was found on different occasions**.

Faced with the urgent need to tackle this issue, CORA has requested a list of laws from different Government Ministries pertaining to their areas that are relevant for their respective scopes of activity and have been amended on numerous occasions or have had complementary provisions appended.

Here the aim is to **proceed, as quickly as possible and within the General State Administration, to the preparation of consolidated texts** on the aforementioned subjects. It is deemed necessary to **pass an ordinary law authorising the Government to draft the corresponding texts.**

Moreover, in order to make these laws known by businesses and avoid the existence of scattered legislation in the future, a system of **common commencement dates** will be introduced for State regulations. Thus, a reduced set of dates will be established for the entry into force of domestic regulations that affect business and enterprise. Excluded from these dates are European regulation (neither immediate enforcement nor the transposition of Directives); rules for air and motor traffic; changes in social entitlements or any regulation not having an impact on entrepreneurial activity.

This project will begin with a **trial phase** and **the regional governments are invited to come on board.**

c) Law on Commercial Debt.

The **on-going situation of public administration's outstanding payments is non-compliant with the legal deadline for paying suppliers within 30 days and has caused an increase in commercial debt. The increase in the average time for paying suppliers, and thus the commercial debt, jeopardises the financial stability of the public administrations and hinders their mid-term compliance with budgetary and public debt stability objectives.**

In this regard, CORA recommends the passing of new regulation to **incorporate the control of the commercial debt into the principle of financial sustainability** and introduce the **concept of an average payment schedule to suppliers** in order to control the commercial debt. All administrations will have **a treasury scheme that includes information pertaining to forecasted supplier payments, guaranteeing the compliance with this payment schedule.** The pace of these payment commitments should be aligned with the execution of the treasury scheme and an automated and gradual supervisory system will be put in place for non-compliance.

d) Administrative burden reduction manual.

The process of administrative simplification and reduction of bureaucratic burdens **is focused on measuring administrative costs and identifying and reducing administrative burdens.**

In accordance with the **OECD's International Standard Costs Manual, "administrative costs"** are those incurred by businesses, the social sector, public authorities and citizens to comply with the legal obligations of providing information on their activities or production whether to public authorities or to private entities. The term **"information"** must be interpreted in the broadest sense possible.

Information provided to the administration can be of two types: a) information compiled by companies even when legislation does not require it and b) information that would not be collected if legal provisions for it did not exist. Costs linked to the latter are known as **"administrative burdens".**

Currently, there is no **Manual for the Reduction of Administrative Burdens and Improvement on General State Administration Regulation.** Only some informative documents have been published in the framework of the Burden Reduction Scheme launched in 2007 and the Methodological Guide for Regulatory Impact Analysis approved by the Council of Ministers Decision of 11 December 2009 in accordance to the provision of Royal Decree 1083/2009 of 3 July. Some of the Regional Governments have, however, published manuals for reducing bureaucratic red tape.

This situation makes it difficult to launch initiatives for reducing redundant and unnecessary administrative burdens in all General State Administration departments and agencies and therefore limits the corrections and technical adjustments that can be made.



To address this, CORA proposes the creation of a **Manual for the Reduction of Administrative Burdens and Improvement on General State Administration Regulation**, engaging each Ministry to present burden reduction projects with special emphasis on measuring procedural processing schedules.

e) Large-scale simplification projects.

- **Environmental procedures.** For structural reasons, there are a large number of entrepreneurial sectors in Spain whose activities are affected by environmental legislation. However, the need to protect the environment and the importance and variety of social interests involved in this protection, have a bearing on the complexity of said legislation, largely international, and the volume of bureaucratic cost it generates.

This is an area in need of simplification, even perhaps through a separate entity. We must also bear in mind that **the scope of the measures adopted in this field is highly meaningful as it affects both the General State Administration and the rest of the public administrations and has a great bearing on the principle of market unity.**

The measures proposed in this area consist of the simplification and reduction of administrative burden in procedures related to the **management of public domain water resources, public domain coastal waters, comprehensive environmental authority, waste management, methods for environmental assessment and environmental accountability.**

- **One-stop customs service.** Currently, customs management imposes a set of **redundant and repetitive administrative burden** on customs operators, **especially in terms of filing papers to have articles dispatched.**

What is more, this situation has a negative impact on the transactions of numerous companies that operate in a sector so crucial to making our economy dynamic as is **foreign trade.**

For these reasons, CORA recommends the **creation of a one-stop e-transaction** hub that will consolidate the formalities that must currently involve several Ministries (Ministry of Agriculture, Food and the Environment, Ministry of Economy and Competition, National Tax Administration Agency, Ministry of Health, Social Services and Equality). This will help **reduce processing times**, unify and consolidate forms, **reduce paper documents** for import-export, and **expedite the dispatch of goods**, avoiding the need of double positioning of containers and coordinating physical checks so that this is done all at once by all monitoring agencies involved.

f) Access to e-Government.

Conscious that the use of electronic systems facilitates and reduces costs of citizen's and companies' transactions with the public administrations, CORA suggests the following measures, along with others:

- **Improvement of horizontal e-Government services.** The Commission proposes **access to a Data Intermediation Platform (PID)** as a method for citizens to exercise their right to abstain from presenting documents already at the disposal of the administration. In the same vein is the creation of an **Electronic Powers Registry**, promoting a broader use by the public administrations of this tool. Additionally, CORA proposes the establishment of a **Public Administration Announcements Board** that would centralise in one virtual hub (the *Official State Gazette*) **the notifications delivered physically by departments and agencies.**

Finally, regarding horizontal measures, proposals are made to **facilitate an electronic auctions system** for judicial as well as administrative matters.

- **Issuance of European health insurance cards online to eliminate the need to go to an office.** The purpose of this project is to allow citizens easy access to application and retrieval of the **European Health Insurance Card or the Provisional Replacement Certificate**, without having to go to the National Social Security Institute (INSS). An electronic channel will allow for this transaction to take place in an expeditious, simple and secure manner, offering access to 2.7 million documents per year.
- **Appointments for State Public Employment Service (SEPE).** The implementation of an appointments system in the 707 offices that service the SEPE.
- **Proof of payment for Social Security quotas.** Creation of an online system on the Social Security electronic headquarters portal that allows businesses to check their Social Security payment status.
- **Increase the personal services rendered online by the National Tax Administration Agency, especially RENO and CERO services and automatic administrative transactions.** This will meet the following objectives: a) Improve user-friendliness of the site and the electronic headquarters, **increase personalised services, offer an easy, simple and intuitive tool to the user**; b) Increase services rendered online, particularly RENO (retrieval, modification and confirmation of the preliminary statement online) and CERO (obtaining tax certificates: income level, proof of up-to-date tax payments, etc.); and c) **increase automatic administrative transactions.**
- **Unification and simplification of identification systems and authentication yet to be created at the National Tax Administration Agency. Foster the use of public employee certificates.** In a move to encourage the use of online services, one of the measures to be adopted is the simplification of identification systems and digital signatures allowed by the Tax Administration Agency. We additionally recommend at this time the review of systems developed for non advanced electronic signatures and redirect them to one common model and criterion to **facilitate and simplify citizen access to online services.**  
We also recommend fostering the use of **public employment certificates** as a tool to **improve inter-administrative collaboration and information exchange.**
- **By extending the electronic application to tax statements and other documents,** the National Tax Administration Agency aims to gradually incorporate new tax-payers into the online tax returns and other document filing system, thus increasing the personalised services available and keeping up to date with the needs of citizens as they change; these should be easy to access, simple and user-friendly. In this manner, the measure strives to **gradually offer the possibility of online submission of all models of tax returns and self-assessments.**
- **Online communication for external users, lessees and normal drivers with vehicle registry.** The project aims to establish a **new online communications channel** folded into other administrations or external agencies (Tax Agency, Town Councils, Managing Entities for Mechanical Vehicle Taxes, Mercantile Registries and Insurance Firms) in order for interested parties to present information to Vehicle Registry about their tax payments status, pending charges or encumbrances and the coverage period for vehicle insurance. It also aims at establishing online communication to the Vehicle Registry regarding the physical or legal individual who leases or normally drives the vehicle.
- **Online appointment arrangement for Traffic Headquarters.** The concept is to develop software that will allow citizens to obtain appointments with Traffic Headquarters to carry out their transactions, either through the www.dgt.es portal or a second tier of the citizen service page 060.
- **Implementation of a New Electronic Case Record (NEJE) at the High Court (Central Tribunals for Administration Litigation or Chamber of Administrative Litigation) or the Social Chamber of the Supreme Court.**
- **Digital transactions for birth and death certificates from health centres.** For **births**, the measure consists of the **unification of procedures before the Civil Registry Office at the health centre where the birth took place**, allowing this to be done at a one-stop service counter, including all

necessary measures to ensure mother-child bloodline through biometric, medical and analytical tests necessary to verify this relationship. The data will be conveyed by the health centre with recognition of the medical professionals' digital signature.

In the case of **deaths**, the project allows for electronic **communication of the death to the Civil Registry** with the necessary precautions in the case that the death occurred in circumstances warranting judicial intervention.

- **Interoperable electronic prescription from the National Health System (SNS).** We aim to **support the initiatives of the regional governments for development and implementation of the digital prescription system**, introducing mechanisms that allow for inter-regional engagement on National Health matters and eventually, engagement on a European level.

- **Creation of a National Health Insurance Card data base.** The most valued feature of the creation of the Health Insurance Card Data Base of the SNS is that it allows **the identification of all citizens through one unmistakable and lifelong national code, throughout all Spanish territory.**

This, together with the Project for a Single Health Insurance Card that unifies the format of the different SNS cards existing today **will allow better patient identification and their affiliation to the Spanish National Health System.** In addition to offering an instrument that guarantees the exercise of the right to health protection throughout the State, this card is necessary for a secure reference of the patient's clinical data when they need to be assisted in a region other than their own or in another EU Member State. It also does away with the need to renew regional health insurance cards and is thus money-saving.

- **Implementation of interoperable electronic clinical case file (HCD).** This is a crucial element to the implementation of information and communications technology in the health system. **The file holds clinical and case management information that is relevant for health professionals (or the variety of professionals interacting with one patient), information taken from their observations and decisions made across the healthcare process.**

The interoperable electronic case file should not be interpreted only as a data storage and retrieval unit, but also as an exchange tool for different professionals and between them and the patient throughout his or her healthcare history.

## g) Support for businesses and investment.

The elimination of bureaucratic red-tape to businesses and entrepreneurs has been a lynchpin in the open process of administrative simplification in Spain in recent years. It is also the **baseline objective of the OECD policy of "Better Regulation" and of EU regulatory quality**, functioning with the understanding that enterprises with better operability and competitiveness are a fundamental asset to an economy for enhancing its productivity and activity levels.

Fully aware of this, CORA proposes the following measures:

- **Publication of all tenders in both the National Public Sector and the Regional Governments on one single Platform for Government Contracts.** The report envisages the e-publication of supplier profiles on a **Government Contracts Platform** across the entire public sector. Currently this is an obligation only at State level, that is, public sector bodies within the national public sector framework, and only optional for contracts emanating from regional or local bodies.
- **Participation of Consular Offices in the provision of Tax Identification cards (NIF) and e-certificates for Spanish non-residents.** This project envisages the subscription of a collaboration agreement between the **National Tax Administration Agency and the Ministry of Foreign Affairs and Cooperation to assign the Tax Identification Number to non-residents at Consular Offices.** In a

second phase, we will study the possibility of Consular Offices acting as registries of non-resident legal individuals, assigning the certification for e-signature from the National Mint (FNMT).

- **Administrative simplification of the public tender process.** This entails simplification of the transactions currently in place **in order to ease access to companies —especially SMEs— to public sector contracts and increase efficiency of public expenditure** to guarantee the best possible contract results in terms cost-benefit ratios.

According to the latest European Commission evaluation on the implementation of the “Small Business Act”, **the proportion of SMEs involved in public sector contracts in Spain is five points lower than the European Union average: 33% compared to the EU’s 38%.** This figure demonstrates the need to adopt corrective measures, especially in times of economic downturn, where SMEs must be given special attention as a driving force for creating employment. **The draft bill for Support for Business and International Engagement renders the public contract regulations more flexible for SMEs, facilitating the constitution and release of guarantees and raising contract ceilings for those requiring special certifications.**

- **Simplification of administrative transactions for start-ups. Reduction of time and cost for setting up a business.** There are a set of initiatives underway to facilitate setting up a business. To this end, **CORA took the “Three Step Start” administrative simplification initiative before the Council of Ministers on 31 May 2013.** It establishes a system for incorporating the declaration of liability that substitutes the municipal licensing in the online business creation process. This way the document can be sent electronically to the City Council, in the appropriate municipal format, so that the business can open immediately.

In another measure, CORA is poised to take the 7<sup>th</sup> Council of Ministers Decision on the **Reduction of Costs and Regulatory Improvement** before the Council of Ministers shortly, the aim of which is to eliminate other required paperwork for starting up a business such as the authorisation of a company’s labour inspection log (this log will no longer be required for micro companies).

These measures top off the proposals initiated by CORA in the draft bill for **Support for Business and International Engagement such as the establishment of limited liability companies without minimum start-up capital with continued constitution schemes; the unification of the different entrepreneurial unique windows for easy access to entrepreneurs and the online authorisation of company records of proceedings books.**

- **Research, innovation and development.** There is a great deal of information required to conduct scientific and technical evaluations regarding the grants awarded to research, development and innovation by competition, generally requiring a great amount of documents.

For this reason, we suggest the **simplification of scientific and technical evaluation processes for projects and other assistance awarded to boost research.** The measure includes: (a) gradual adoption of an evaluation model based on the pre-selection of proposals with fewer documents; (b) **compulsory use of the “Standardised Curriculum Vitae” across the board (CVN);** (c) the **adoption of common criteria and procedures for all public administrations;** and (d) **the adoption of simplified evaluation formulas.**

## h) Public Services.

- **General Access Point. One of CORA’s most important initiatives is setting up a real general access point as an entry portal for access to the public administrations and to all horizontal information on activities, organization and functioning of the administration, as well as handling transactions and most relevant services.**

**The General e-Access Point for public administrations (PAG)** was envisaged in the following legislation: Law 11/2007 of 22 June on e-access for citizens to public services, article 8, and Royal

Decree 1671/2009 of 6 November, which partially implemented the former in its Introduction and Articles 7, 8, 9, 24 and 31, and in point two of the Additional Provisions. The legislation defines, regulates and describes the basic features of the e-Access Point.

Currently, the **www.060.es portal** replaces the e-Access Point, aimed guiding citizens and entrepreneurs in their dealings with the administrations. Despite receiving the greatest number of hits in the General State Administration, **it is a scarcely recognised trademark representing the General State Administration and lacks the features that one would demand of a true e-Access Point.**

**A new portal must be designed and launched** that will at least meet the requirements outlined in the regulations governing it and respond to the citizen's expectations.

The implementation of a single entry point for citizens will allow them to **access information from the different public administrations in one place**, receive orientation for administrative dealings, initiate administrative processes and check the status of their transactions at any time. Here, they will be able to use the services provided by the administration, categorised by subjects or "vital events".

- **The extension of hotline service 060 to all public administrations, centralising citizen service telephone numbers 901, 902 and different geographical numbers of different departments and bodies in the telephone platform cloud 060 network.** Currently, the administration has a **smart network cloud application platform offering 24/7 service 365 days a year.** This platform is linked to the **Applications Networks System for Administrations (SARA)** allowing online services through cloud-hosted operator service where the call is then transferred to the different entities. The aim is to **extend this service to all the public administrations, making it truly universal.**
- **Creation of an e-office for citizen information and transaction management for Social Security benefits.** The project strives to **transform the current citizen service of the National Social Security Institute which is based on person-to-person interaction by incorporating an online option for operating.** The e-Office **will give citizens the opportunity to conduct any type of administrative transaction entirely online, with an immediate response to their queries, because of the system's ability to handle the processes automatically.**
- **Job offer advertising.** This measure, which was studied by CORA, was included in Royal Decree Law 4/2013 of 22 February. It includes ways of supporting enterprise and stimulating growth and job creation and envisages setting up a **single web portal in which all job offers will be advertised** —those that reach regional public employment services and the State Public Employment Service. This will be available to all citizens and companies offering jobs.
- **Digitalisation of the Bureau for e-Information and Assistance to Victims of Terrorism.** Victims of terrorist acts will be allowed **private access to the status of their procedures** and given online Bureau assistance from any internet connection. This will also serve as a single public online point of access for information about victims, their rights and the activities carried out at the Bureau. Various improvements have also been included in Bureau management.
- **An Official State Gazette "made to measure".** The online system of **personalised notifications** implemented in the *Official State Gazette* (BOE) finalises with the creation of new personalised search tools and access for citizens, free of charge, to online codes containing all regulations in force regarding a certain topic.

### 3. OUTCOMES OF THE REFORM

As we have stated herein, the streamlining and rationalising of the Spanish Public Administration began in 2012.

As a result of the measures adopted by the Government since the beginning of its legislative term and within the disciplinary framework of the Budgetary Stability and Financial Sustainability Act, or LOEPSF, the



**deficit of the entirety of public administrations has been reduced to 6.98%** of GDP in 2012<sup>1</sup> compared to the 2011 figure of 8.96% representing a remarkable correction in a context of sharp decline in activity.

This streamlining is not a temporary measure nor is it a tail-end consequence of the crisis. Since the beginning of this legislative term, structural changes have been bolstered in the administration, driven by efficiency criteria. Through the initiative of the Nation's Government, **many important public administration reforms have been implemented during this past year and a half.**

**The entirety of the measures described in this text represent the public administration structural reforms addressed by the Nation's Government from the outset of its legislative term and will amount to, on the whole, in the four years of government, a decrease in public-sector spending of €37.6 billion euros. At the end of this period, when total implementation of the reforms is reached, the administrations will be saving €17.5 billion annually compared to these expenditures in 2011.**

**Administrative rationalisation measures, elimination of entities and structures, elimination of duplications and improved management of resources and services included in the CORA report represent accrued total savings of €6.4 billion in their three years of application for the public administrations. In addition to these savings are those generated by the previously quantified measures regarding public employment. When the total effectiveness of the reforms is reached, the savings to citizens and businesses will be €16.3 billion.**

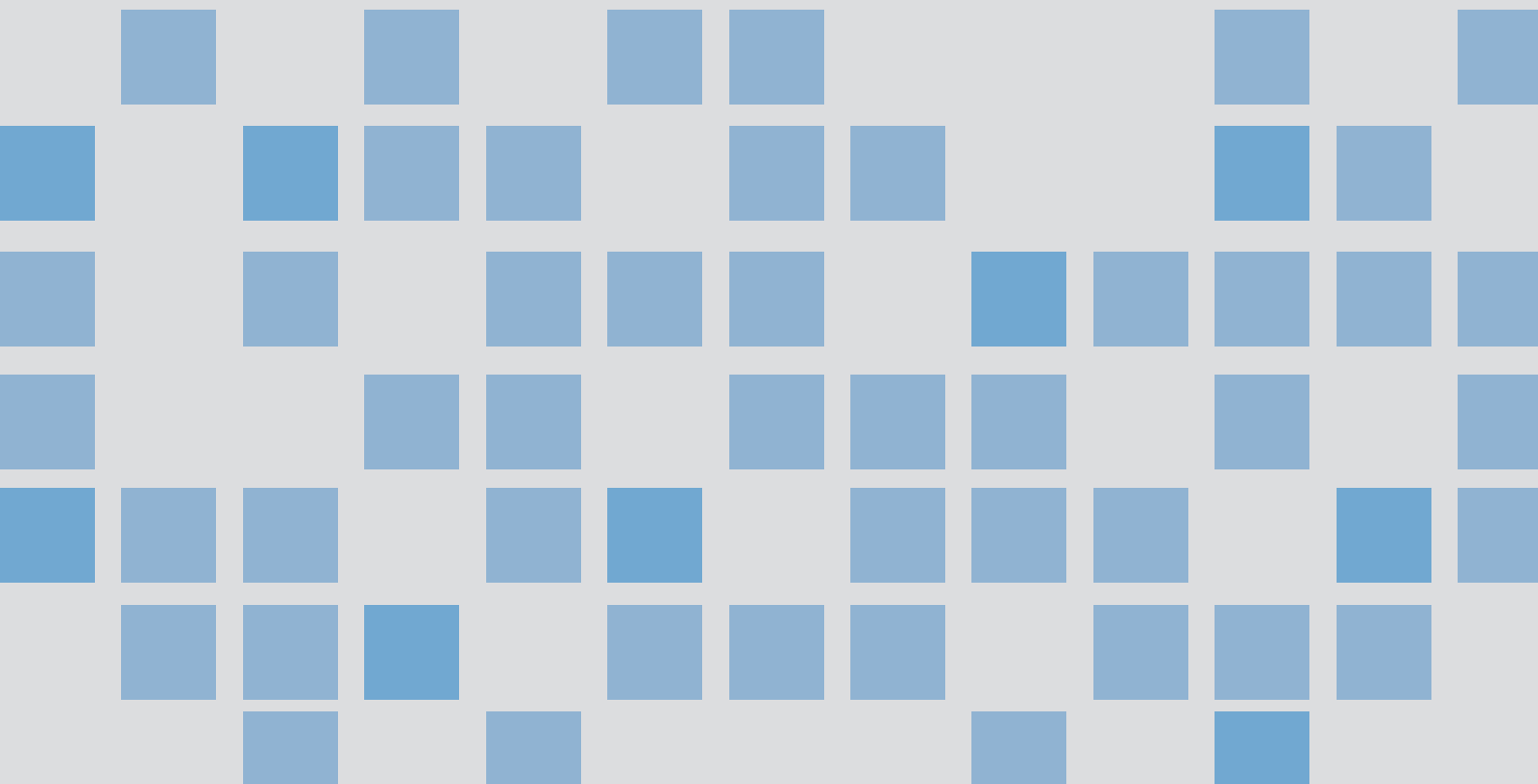
We must be mindful that the economic impact of some of the most relevant structural measures included in this report, either already underway or currently in approval process, is not yet determinable. For this reason, these figures should be considered as being extremely cautious in nature.

The aforementioned figures do not reflect the important reduction in public expenditure as a consequence of structural reforms that the regional governments and local entities have included in their respective Adjustment Plans. These have been referred to in previous paragraphs of this summary and are a fundamental component of the efforts made across the entire State.

<sup>1</sup> Not included is the deficit deriving from Financial Sector overhaul which reached 3.65% of GDP in 2012.



# Introduction. Government Reform In Spain







## I. INTRODUCTION. GOVERNMENT REFORM IN SPAIN

### 1. REASONS FOR REFORM

There is broad agreement that **government must adapt to meet the demands of the twenty-first century**. In the last thirty years, most OECD countries have implemented measures to reform their public administrations. Some of these reforms form part of broad, overall plans, while others focus on specific issues. In general, however, all stem from the need to curb the growth of spending, as part of a process of fiscal consolidation, although it is increasingly the case that reforms are aimed at achieving a sweeping transformation of public sector government, to improve its effectiveness, quality and efficiency, and thus better respond to the nation's requirements.

This is no idle concern, and the management of public assets is considered an issue of vital importance. **In terms of public expenditure in the European Union, government spending represents half of the entire economy**. If one of the strategic variables for economic development is national competitiveness, an organisation that accounts for 50% of GDP must be competitive.

Over and above its quantitative importance, government determines economic growth by providing a stable framework in which the private sector may develop. On the one hand, government defines the regulatory environment that facilitates business, provides legal certainty, ensures fair competition in markets and protects intellectual and industrial property. On the other, the achievement of sustainable public accounts generates confidence in the markets and contributes to improve access to capital, in both the public and the private sector.

Evidently, government plays a major role in every modern society, and the welfare state is one of the pillars of the social system of European economies. Public services must be provided, with maximum efficiency and quality. **There is nothing more antisocial than governmental inefficiency, because public goods and services are paid for with the taxes raised from the whole population**.

Consequently, the reform of government arises from the need to improve its efficiency. In view of this priority goal, a concept that is increasingly accepted in OECD countries is that of **"Open Government", according to which government administration should be based on the values of transparency, accessibility and responsiveness to new ideas and demands. Thus, the administration should be at the service of the country's citizens**. In short, reforms should be made, not just to improve government efficiency but also to change the focus of the administration. Innovations such as **e-Government seek not only to do the same online, but also to use the internet to carry out new functions**.

Government reform in a globalised world also sends a message about the political will to change. Reforms in the public sphere have a greater impact than in the past and reinforce the credibility of governments' commitments to adopt the structural measures that will bring about a speedy economic recovery.

### 2. GOVERNMENT REFORM IN OTHER COUNTRIES

Just as there is no single model of government, neither is there a universal pattern of government reform. Every country that has carried out reforms in the public sector has taken a different approach. Nevertheless, in almost all cases, the initiative arose from an urgent need to rebalance public finances, leading policymakers to focus on measures to control spending, either by eliminating policies and projects (zero-based budget, cutting out overlaps, etc.) or by increasing their efficiency (performance budgeting, common service centres, e-government, etc.).

An analysis of the various reform processes undertaken in recent years by developed countries shows that, despite cultural, administrative and economic differences, there are certain common factors that must be present, concurrently, if a far-reaching government reform is to be achieved:

- **Fiscal urgency**
- **Public support**
- **Time**
- **Responsibility and political will**

**Fiscal urgency in itself does not determine the adoption of reforms, but an imbalance in public accounts is the alarm signal that highlights their necessity.** Without the existence of such urgency to contain spending, it is unlikely that the necessary adjustments would be carried out to public spending programmes.

**Public support may be present because, as is the case at present in Spain, there is general awareness of the need to reduce the size of government and to improve its performance.** Such reforms are among the most urgent priorities, according to population surveys conducted by the Spanish Centre for Sociological Research<sup>1</sup>.

In any case, **the government cannot be transformed overnight.** It is necessary to conduct a thorough analysis of its underlying weaknesses, to identify opportunities for improvement and to initiate a reform process affecting not only structures and procedures, but the very culture of the administration, as well as how individuals and businesses interact with the government, and how it functions in practice. This is one of the most important structural measures for the proper functioning of the State in general and of the economy in particular, and so it is a matter of absolute priority to achieve **political commitment and responsibility**, not only to undertake the process of change, but to maintain its momentum over time.

We now summarise the basic features of reforms undertaken by other countries, which have been studied as a basis for the proposals made in this report. From the transformation of the public sector in Canada, we conclude that reforms to central government should be complemented by parallel reforms to regional administrations and by appropriate coordination and cooperation mechanisms, thus avoiding the duplication of functions and inefficiency. It is noteworthy that the Canadian reform was not designed, at the outset, in terms of financial savings; nevertheless, these were obtained from the efficiency improvements achieved.

The experience in France is a good example of the structural nature of public-sector reforms. Despite the progress made and the measures implemented over the last five years, effort is still needed to maintain the momentum of the process. Only then, when the effects of reform are fully effective, can its overall impact be evaluated.

A key aspect of the reform process in the UK, which was highlighted in the interview between the President of the Commission for Public Administration Reform (CORA) and the Minister for the Cabinet Office, Francis Maude, is how important it is for the finance and public administration authorities to work together to make change effective. This principle is shared by the Spanish Government, and it is reflected in the current ministerial structure. For the effective implementation of the reform plan, it is also essential to establish an office at the highest level, with the sole purpose of promoting and monitoring its timely completion.

<sup>1</sup> A relative majority of citizens have a negative view of the functioning of government (47.3% vs 25.7% with a positive view). This perception has gradually worsened since 2007. In 2006, there were more positive than negative opinions (36.1% vs 27.2%). The majority of respondents (71.4%) report having experienced problems in their dealings with government entities, compared to 22.9% who have not had such difficulties. Political Opinion Barometer, May 2012.

## Government reform in Canada

In 1993, the Liberal Party, after winning the elections, faced with a situation of deteriorating public accounts, decided to undertake a far-reaching government reform. For almost 20 years, Canada had had high levels of Federal deficit (exceeding 4%), while public debt had reached 67% of GDP and debt repayments were consuming 35% of public resources.

The "Program Review" was the Federal government's response to the fiscal difficulties facing the country. This was an ambitious initiative that brought about many changes in the size and function of the public sector. The government rejected the option of making an across-the-board reduction in budget items, choosing instead to conduct an exhaustive study of the importance of different policies and programmes and to apply cutbacks in areas considered of lower priority. **The question was not "what to cut" but "what must be kept". These decisions were taken, not from the standpoint of tax revenues, but in terms of what would best contribute to the nation's future.** Therefore, the different departments were not set targets for spending cuts, but were instructed to prepare their reports without knowing which areas would eventually be affected. This methodology enabled planners to prioritise budget items: thus, spending was increased for some and reduced for others, while items considered to be non-justified were eliminated.

As well as reforms to the Federal government system, a similar process was applied to the provinces of Canada. This was of vital importance in view of the high degree of political decentralisation in the country and because it is the regional and local governments that provide the majority of public services, including health, education, social assistance, transport, natural resources and the police. **Canada, together with Spain, is one of the most decentralised countries in the world.**

The "Program Review" achieved its goal of applying a thoroughgoing review of Federal government policies. The cuts made in different budget items, of 5-60%, reflected the need to focus on priority areas. Some items disappeared, while others received an increased amount. The overall spending reduction was about 21%.

However, apart from reviewing priorities and serving as a basis for cost reduction programmes, the "Program Review" also brought about a change in how services and programmes were provided. In the social services, the roles played by the different administrations were reviewed to eliminate overlapping and duplication, whilst ensuring the provision of equal and equitable services across the country. Systems of cooperation were established between the different territorial areas of government (Federal, provincial and local), as well as with the private sector and the fourth sector to provide services to the population in areas such as tourism, youth employment and the environment.

**The sustainable spending reductions made as a result of the 'Program Review', together with the benefits of the structural reforms made (free trade agreements and a higher tax base, achieved through a tax reform), allowed the Canadian government to eliminate the deficit in three years, and in 1998, for the first time in 28 years, the public accounts were in surplus, a situation that was maintained for the next ten years.**

The "Program Review", therefore, represented a fundamental reform of the public sector, which began in 1994 and concluded in 1998, when it was considered to be fully implemented. Since then, partial revisions and reforms have been effected, providing the new model with continuity and enabling its continuing application.

## Government reform in France

On 20 June 2007, the French government announced a general review to modernise and rationalise public policies.

The state sector in France is one of the largest in the European Union. Public spending as a percentage of GDP exceeded 50.7% in 1991 and has since risen to reach 56.6% in 2012, the highest in the eurozone (average value 49.9%). The enormous weight of the public sector is partly responsible for the sharp increase in public debt in France, which rose from 40% of GDP in 1991 to 90.2% of GDP in 2012.

The aim of the reform launched by Nicolas Sarkozy's government was to take a root-and-branch approach to the problems affecting the French public sector. The goal was clear: **to do more with less, improving public services through greater efficiency and by redefining their functions.**

In the initial phase, reforms were made of the structure, organisation and functions of public bodies. Later, from 2009, measures were undertaken to increase management efficiency and to simplify and improve the quality of procedures, with respect not only to central government but also to territorial authorities. Most of these measures can be classified into four main categories: the modernisation of public services, reorganisation and restructuring, the promotion of modernisation and simplification, and greater efficiency and economies of scale.

At the local government level, reforms were focused on rationalising the powers of local authorities and assigning certain powers to larger territorial entities, whilst shrinking administrative structures and cutting the number of senior positions.

According to the French Government, **the total savings between 2008 and 2013 amount to 15 billion euros.** Nevertheless, only limited impact on public spending was achieved by 2012, with the majority of measures being expected to take effect from 2013. Of the 500 measures adopted, in 2012 63% were still under development. In addition, structural reforms, which is the case of most of those undertaken, often produce effects in the medium to long term, and so it is still early to evaluate the results of the reform.

## Government reform in the United Kingdom

After the general election of May 2010, David Cameron's coalition government embarked on an ambitious reform programme to address the biggest budget deficit in the UK since the war.

To achieve this goal, a structural reform plan was adopted in July 2010 to gain economies of scale, to eliminate overlaps and to increase standardisation, simplification, comparability and transparency in governance. Analysis of the measures proposed, their implementation, review and evaluation is the responsibility of the Efficiency and Reform Group, a central office at the highest level within the Cabinet Office, the Spanish equivalent of which is the Ministry of the Presidency.

In 2011, **a systematic analysis was conducted of 904 public bodies**, with the aim of reducing costs and increasing their control and responsibility. After evaluating the goals, function, composition and structure of each body, it was decided that 204 should be abolished, another 177 consolidated into 73, a further 120 transformed and only 397 maintained unchanged. The remaining six are still under consideration. In addition, the Public Bodies Act states that a triennial review should be made of each of these bodies to verify whether its structure remains appropriate for its objectives and, if so, to ensure its compliance with the principles of good governance.

Furthermore, a system of **"mutuals"** (public service spin-offs) has been implemented, under which, with government assistance, public sector workers participate in a joint venture with the private sector (sometimes with the public sector, too) to which the necessary resources are assigned. At present, 58 mutuals are in operation and a further 40 projects are scheduled. The UK is also conducting **a review of its model of human resources** (management, recruitment, training, etc.) and has created a central office of strategic coordination among public organisations.

In December 2012, with a view to enhancing government efficiency, the **Next Generation Shared Services Strategic Plan** was presented, targeted to achieve savings of 475-700 million euros. The Plan aims to produce greater management efficiency through the creation of five new shared services centres, providing services to a number of ministries in areas such as funding, payroll management, human resources and public tendering. **The Plan is expected to produce savings of 25-40% in each of these areas.**

For the last three years, the Cabinet Office of the UK Government has been heading an ambitious reform programme, which should be fully implemented by 2015. **The measures taken so far have produced savings of €4.5 billion in 2011 and a further €6.6 billion in 2012. For 2013, savings of €9.6 billion are expected.**

### 3. REFORM IN THE CONTEXT OF THE PRESENT ECONOMIC SITUATION IN SPAIN

The ultimate objective of government policy is to achieve sustainable growth and job creation. To do this, from the beginning of the legislature three strategic lines were established to shape economic policy:

- a) **Fiscal consolidation**, to return to a sustainable path of public debt, restoring credibility in the Spanish economy, facilitating access to credit, improving the external balance and making Spanish fiscal policy consistent with membership of a reinforced Economic and Monetary Union.
- b) **Reform of the financial sector**, to support the existence of solid, solvent entities with full access to financial markets and once again channelling savings toward productive investment.
- c) **Structural reforms**, to enhance flexibility and competition, thus containing profit margins and business costs, improving the quality of production factors and facilitating the allocation of

resources to more competitive sectors. **These measures include labour reform, education reform and the Single Market Guarantee Act.**

**Government reform must be developed within a framework of structural reforms and fiscal consolidation.** The administration's paramount role in regulating the economy, and society in general, means that its structural reform is crucial to economic development. A sustainable, modern public administration is the fundamental basis for the proper functioning of markets and, a matter of vital importance, for restoring confidence in the institutions. Public Sector reform should be aimed at ensuring that public services are delivered as efficiently and as economically as possible, deriving benefits from economies of scale, avoiding duplication and making procedures simple and standardised.

This reform, therefore, seeks to increase productivity in the public sector, with the delivery of more public services per employee, to be achieved by rationalising spending, cutting back less efficient items and eliminating overlaps. **An analysis of public spending efficiency is needed to detect spending items and programmes that can be reduced without affecting the level of services provided, and so the present reform is being carried out in conjunction with a comprehensive analysis of public spending management, with the aim of eliminating superfluous levels of government, avoiding overlaps, streamlining procedures and, overall, achieving greater control over the use of resources.**

These measures will not only improve efficiency and raise the quality of public services, but also produce significant savings, thus contributing to achieve the goals of fiscal consolidation.

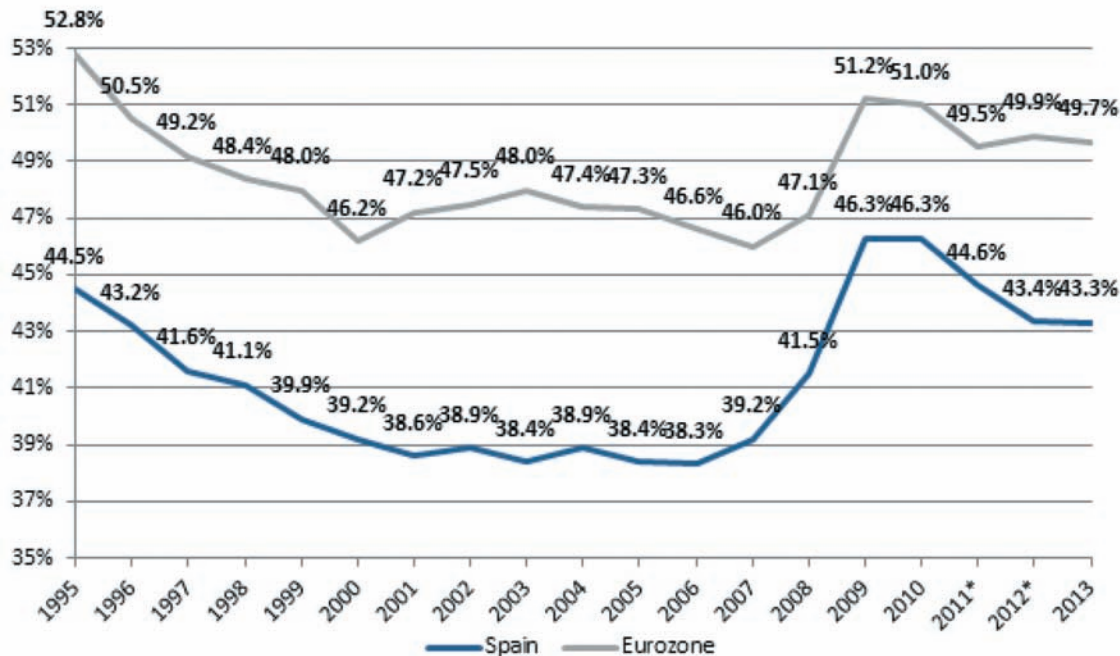
#### 4. THE SIZE AND SHAPE OF THE PUBLIC SECTOR IN SPAIN

In any reform of the public sector, it is first necessary to determine its true dimensions, examining the basic indicators of public spending. These values must then be compared with those for other major countries in our sphere of interest.

The main indicator used to measure the weight of government in the economy is the ratio **of non-financial spending to GDP**. On this basis, Spain has remained well below the European Union average, as shown in the following graph:



## Evolution of public expenditure in Spain and the euro area (1995-2013) (%/GDP)



Source: European Commission (European Economy Spring 2013) and Stability Program Kingdom of Spain 2013-2016.

\*The data of public spending in 2011 and 2012 exclude Aid to Financial Institution, in the framework of the restructuring of the financial sector, equivalent to 0.48% of GDP and 3.65% of GDP, respectively. Including those aids, the public spending would stand at 45.2% of GDP in 2011 and 47% in 2012.

According to data for 2012, Spain is among the 10 EU countries with the lowest level of public spending as a percentage of GDP, at 43.4%, well below the figures for other major economies in the region, such as France (56.6%), Germany (45%), United Kingdom (48.5%) and Italy (50.7%)<sup>2</sup>.

Thus, it can be concluded that the Spanish public sector is not especially large, in comparison with the average for EU countries. However, in this country the increase in public spending has been particularly intense in recent years. After a severe fiscal cutback between 1996 and 2004, when public spending relative to GDP was reduced by 4.3 percentage points (from 43.2% to 38.9%), the weight of the public sector in the economy then increased significantly. **Thus, from 2005 to 2011, it rose by 6.7 percentage points, from 38.4% to 45.2%**, a rate of increase exceeded by only two OECD countries, Ireland and Greece.

The data published in the public sector budgets for 2012 show that **social spending and basic public services accounted for 65.92% of public spending, equivalent to nearly 30% of GDP.**

<sup>2</sup> Source: European Commission. *European Economy, Spring 2013.*

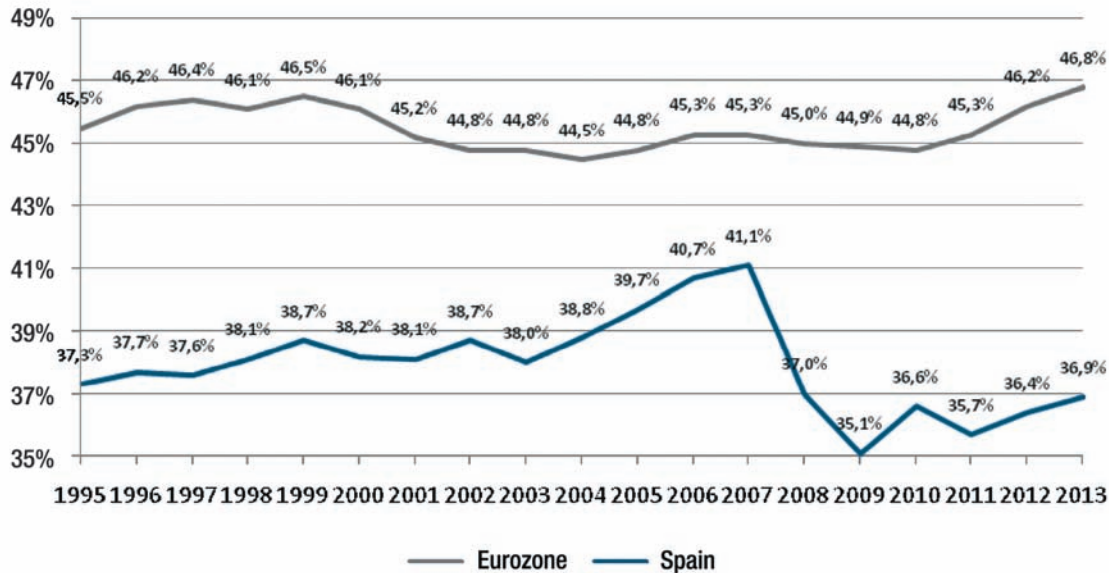
BUDGET 2012 (million €)				
	STATE (consolidated GSB)	ACs	LCs	Total
Activities of social protection and promotion	168,249.05	18,208.88	7,448.17	193,906.10
Production of essential public goods	7,137.54	95,675.82	8,437.64	111,257.50
<b>SOCIAL SPENDING (1)</b>	<b>175,386.59</b>	<b>113,884.70</b>	<b>15,885.81</b>	<b>305,157.10</b>
Justice	1,612.63	2,355.39		3,968.02
Defense	6,269.32			6,269.32
Citizen Security and penitentiary centers	8,354.91	2,951.39	4,895.75	9,527.76
<b>BASIC PUBLIC SERVICES (2)</b>	<b>16,236.86</b>	<b>5,306.78</b>	<b>4,895.75</b>	<b>26,439.39</b>
<b>FUNDAMENTAL PUBLIC SERVICES EXPENDITURE (1+2)</b>	<b>191,623.45</b>	<b>119,191.48</b>	<b>20,781.56</b>	<b>331,596.49</b>
<b>TOTAL EXPENDITURE</b>	<b>282,928.64</b>	<b>159,295.33</b>	<b>60,811.74</b>	<b>503,035.71</b>
<b>% Fundamental Public Services expenditure / Total expenditure</b>	<b>67.73%</b>	<b>74.82%</b>	<b>34.17%</b>	<b>65.92%</b>

Source: Public Administration Budget: chapters I to VIII, excluding Public Debt policy.

Furthermore, with respect to the ratio of **non-financial spending to GDP**, it can be seen that in recent years government revenue, traditionally below the eurozone average, has plummeted, due to the economic crisis. In the first two years of the crisis (2008-9), more than 6 percentage points of GDP were lost, a much higher fall than in other eurozone countries.



## Evolution of public revenues in Spain and the euro area (1995-2013) (%/GDP)



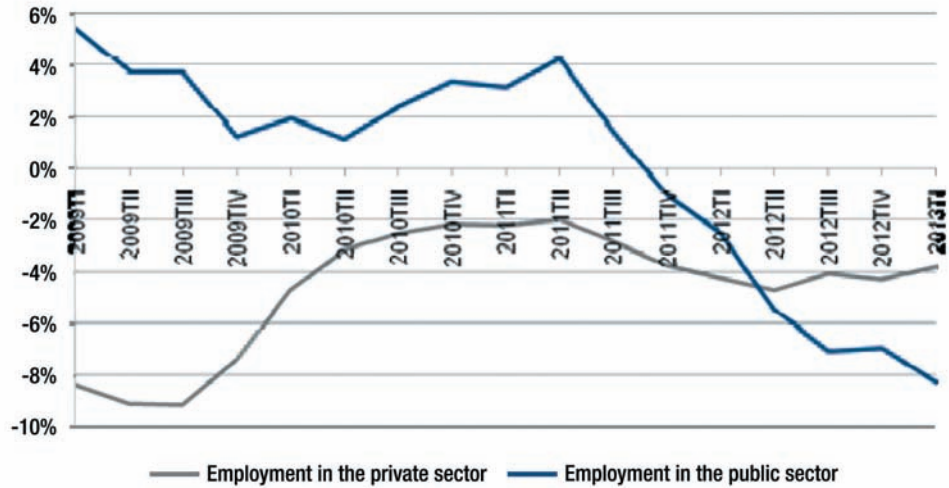
Source: European Commission (European Economy Spring 2013).

In 2012, government revenues in Spain amounted to 36.4% of GDP, almost 10 percentage points below the eurozone average, and only ahead of Ireland (34.6%) and Slovakia (33.1%). Analysis of national income and spending, therefore, shows that **the Spanish public sector is small in comparison with our EU partners**. However, in the current process of consolidation of public finances, the levels of public spending and revenue must be balanced, and this means that spending efficiency must be increased, by means of selective reductions.

**In terms of public employment, the Spanish public sector has grown considerably during the present economic crisis.** Thus, in the third quarter of 2011, according to the Labour Force Survey, the public sector had 3,220,600 employees, 288,700 more than in the third quarter of 2007, and accounted for 17.7% of total employment in the economy, one point above the OECD average. Since then, the number of workers in public employment has fallen by 374,800<sup>3</sup>, and the ratio is now 17.1%, still above the OECD average, but approaching it. Proof of this change is the evolution of employment in the public and private sectors; since the third quarter of 2011, government employment has fallen by 11.6% compared with 7.7% in the private sector.

<sup>3</sup> Labour Force Survey, Jan-Mar 2013.

## Annual percentage changes in employment in the public and private sectors



Source: INE, Active Population Survey.

**Public sector remuneration** (wages, salaries and social security contributions) represented 11% of GDP in 2012, down from 12% in 2009, and are now approaching the eurozone average of 10.5%, according to Eurostat.

Another factor to be taken into account regarding the size of government **is that the decentralisation of the public sector in Spain is affecting both spending and employment**. Administrative decentralisation can have positive effects on efficiency levels. In fact, several OECD studies have cited decentralisation as one way to increase efficiency, as it brings political decisions closer to the public as a whole, and to the users of public services, in particular. However, in Spain the process has taken place very rapidly, accompanied by sharp rises in spending and public employment by the regional governments (Autonomous Communities). In many cases, this growth has reflected the creation of administrative structures paralleling those provided by the national government, which has led to unnecessary actions and excessive spending and public employment in regional and local administrations.

According to the Central Personnel Registry, **between 1982 and 2012 the number of workers employed by the General State Administration (GSA) fell by 75%, while those in the autonomous regions (at a very low base in 1982) rose 30-fold and local government numbers increased by nearly 400%**<sup>4</sup>. Thus, in January 2012, the General State Administration had 234,685 employees and in this respect was the smallest level of government, compared with 1,351,883 employed by the autonomous regions and 597,212 by local administrations. This transfer of public sector workers was accompanied by a significant increase in total public employment. In other words, the change in employment patterns was not a simple administrative transfer to a different level of government, but constituted a sharp rise in total employment during and after decentralisation. Thus, employment in the public sector as a whole nearly doubled in the period in question, from 1,124,162 to 2,183,780.

<sup>4</sup> These data do not include the armed forces, police and other security forces, the administration of justice, university staff, or public-sector entities, except the postal service (in 1982), the National Heritage and the Spanish Tax Authority.

ADMINISTRATION	1982 (1)	2012 (2)	DIFFERENCE (2-1)
GSA	912,642	234,685	- 677,957
Autonomous Communities	44,475	1,351,883	1,307,408
Local Governments	167,045	597,212	430,167
<b>TOTAL</b>	<b>1,124,162</b>	<b>2,183,780</b>	<b>1,059,618</b>

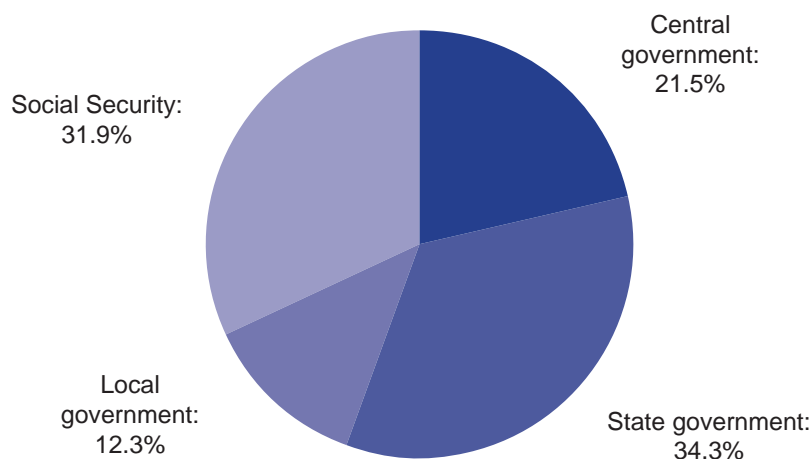
Source for 1982, Diagnostic Report DGFP, 2012: January Data at the Central Human Resources Registry.

There can be no doubt that in the early 1980s, just a few years after the restoration of democracy in Spain, the size of government was that corresponding to a developing country, to a tax system yet to be effectively reformed and to a welfare state yet to be developed. Nevertheless, the sharp rise that took place in public employment was due not just to a change in the economic model but was also the outcome of considerable duplication and inefficiency. Therefore, by correcting these deficiencies, there is ample scope to produce a greater number of public goods and services with fewer resources, and this room for manoeuvre is directly related to the relative size of the different levels of government.

An analysis of the decentralisation process in terms of the distribution of spending leads to similar conclusions.

Spain has a cost structure reflecting a high degree of decentralisation. Nearly half of all public spending is disbursed by the autonomous regions and by local administrations, according to the latest data available from the OECD.

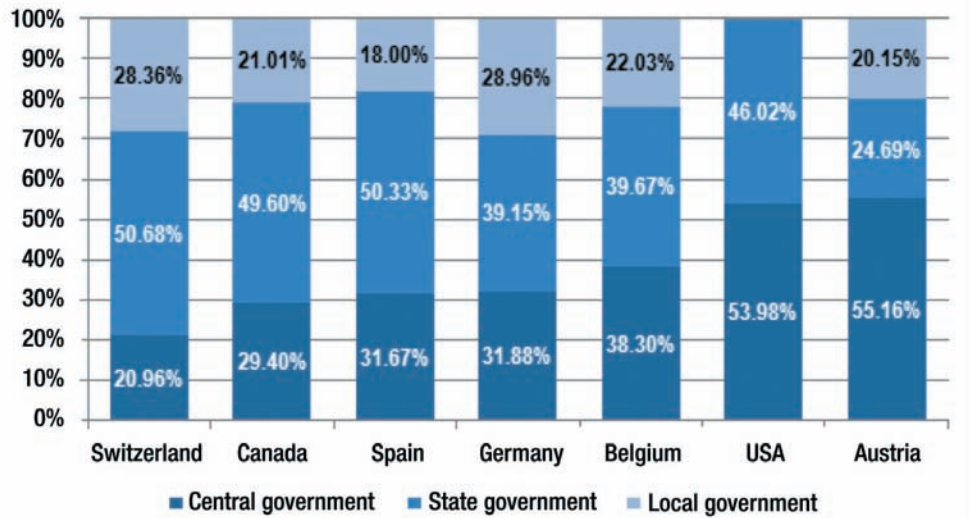
**Expenditure Structure 2011**



Source: OECD

Comparing the level of decentralised spending with that recorded in countries with a federal structure shows that Spain is one of the countries with the highest degree of decentralisation of public spending, after Social Security payments are excluded.

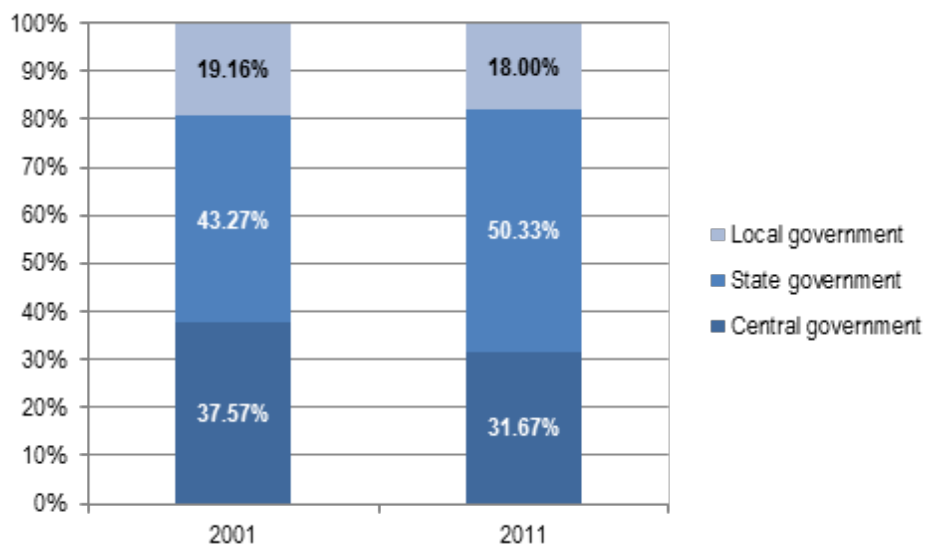
## Expenditure Structure in diff. countries in 2011 (excluding Social Security)



Source: OECD. Note: cost data is not split by regional administrations for the USA

Perhaps the most significant aspect is the fast rate at which this spending structure has changed in Spain. While in other countries examined, this structure has remained relatively stable in recent years, in Spain the creation of the autonomous regions and the assumption of new roles has generated a sharp rise in the proportion of spending by the regions.

## Evolution of the structure of expenditure in Spain (excluding Social Security)



Source: OECD

Another aspect of interest is that in recent years there has been some gravitation of public spending toward public enterprises, particularly among local and regional administrations. These enterprises are not recorded as forming part of the public sector, but their imbalances and losses, if any, must eventually be met from the budget and constitute an upward pressure on the public sector's funding needs.

For all these reasons, **it is necessary to halt and reverse the strong upward trend of public spending that has taken place in recent years, and to take steps to control it at all levels of government. In consequence, the reforms that are currently being discussed mainly in terms of the General State Administration must also be extended to the local and regional administrations.**

Having analysed the size of government in Spain and its degree of decentralisation, we now address its structure, to distinguish the part responsible for the delivery of essential services from that which represents the “administrative apparatus” and is therefore the focus of our measures to achieve greater rationalisation and efficiency. We define essential services as those provided by teachers, healthcare staff, national and regional police and public security forces, the armed forces, the judiciary and prison personnel. The remaining public employees would mainly be those dedicated to routine administrative activities.

When we speak of **“shrinking the government”** and identify this with the **“administrative apparatus” of ministries, departments and other public bodies, we refer to the 279,094 staff employed by the General State Administration and to the 230,447 employed by the autonomous regions, who account for 26% of all those employed by these levels of government,** since the remaining personnel are dedicated to services that are considered essential. Regarding the local corporations, there is not currently available a classification enabling us to determine the proportion of their staff dedicated to services considered of fundamental importance.

<b>DISTRIBUTION OF PUBLIC ADMINISTRATION EMPLOYEES (JANUARY 2012)</b>	
<b>Central Government</b>	<b>581,861</b>
<b>General State Administration</b>	<b>234,685</b>
<b>Ministries and linked areas</b>	<b>215,677</b>
Ministries and Autonomous Organisms	124,981
Non-university Education	7,260
Penitentiary Centers	24,282
Social Security (Management Institutions)	30,217
National Heritage	1,410
Spanish Tax Administration Agency	27,527
<b>State agencies (Ley 28/2006)</b>	<b>16,019</b>
<b>Social Security Health Institutions</b>	<b>2,989</b>
<b>Security Forces of the State</b>	<b>148,187</b>
<b>Armed Forces</b>	<b>126,924</b>
<b>Administration of Justice</b>	<b>24,667</b>
<b>Public Bodies</b>	<b>47,398</b>
<b>Autonomous Communities</b>	<b>1,351,883</b>
Departments and Autonomous Organisms	230,447
Non-university Education	550,306
Health Institutions	505,185
Administration of Justice	39,373
Regional Security Forces	26,572
<b>Local Corporations</b>	<b>597,212</b>
Municipalities	526,248
Councils / Island Councils	70,964
<b>Universities</b>	<b>154,881</b>
<b>TOTAL</b>	<b>2,685,837</b>

Source: Central Human Resources Registry: January 1<sup>st</sup> 2012.

This absence of a precise quantification of public employment is one of the areas in which improvements are proposed in the present report. Nevertheless, a reasonable estimation can be made of the size of this administrative apparatus in relation to total staff numbers.

## 5. MEASURES FOR GOVERNMENT REFORM ADOPTED SINCE 2012

The above analysis of the size of the public sector in Spain enables us to contextualise **the reform and restructuring measures taken by the Government**, and which will be continued by the Commission for Public Administration Reform (CORA). Neither CORA nor this report are starting from zero, but take into account **the foundations of reform that were laid during 2012, with far-reaching legislative changes that will shape the course of action for public authorities in the future.**

From the outset of the present legislature, the government has implemented a resolute strategy of fiscal consolidation, with two clearly-distinguished pillars:

- On the one hand, reforms are being made to strengthen the **framework of economic governance in Spain**, improving **budget discipline and the control of public finances** at all levels of government. In 2012, a major step was taken to enhance the budget framework, with the approval of the Budget Stability and Financial Sustainability Act, which will be reinforced in 2013 with the creation of the Independent Fiscal Responsibility Authority and with the adoption of the Transparency, Access to Information and Good Governance Act.
- **Revenue and cost adjustment measures are being applied at all levels of government** in order to correct imbalances in public finances and to comply with the fiscal consolidation targets set. Many of the cost-saving measures focus on the implementation of cutbacks in administrative structures, as detailed below, involving both extraordinary measures and far-reaching structural measures.

Thanks to the measures taken by the Government since the beginning of the legislature, and within the disciplinary framework of the Budget Stability and Financial Sustainability Act, **the overall deficit for all levels of government decreased to 6.98% of GDP in 2012**, compared with the 8.96% recorded in 2011, representing a significant improvement, in the context of a sharp fall in economic activity.

In total, **the budget deficit has been reduced by 2 percentage points (pp) of GDP, equivalent to 22 billion euros**, of which 19.6 billion were achieved through cost-cutting measures and the remaining 2.4 billion through increased revenue.

Nevertheless, the consolidation measures adopted amounted savings of 44 billion euros, equivalent to 4.2 percentage points of GDP, more than counteracting the 2 pp reduction in the deficit.

These measures were made necessary by the adverse macroeconomic scenario in 2012, which produced an automatic increase in certain areas of spending, together with falling revenues.

- On the spending side, the cuts made were equivalent to 2.5 pp of GDP, more than 26.2 billion euros, to offset the 20% increase that took place in **debt interest, and social welfare benefits**, which increased by 2.9%, driven by spending on unemployment benefits and pensions. The remaining spending headings decreased during 2012 by about 10% with respect to 2011.
- On the revenue side, the adjustments amounted to 1.7 pp of GDP, more than 17.8 billion euros, which helped offset the drop in tax revenue. The regulatory measures adopted by the Government with respect to the main taxes have produced an extra 11.24 billion euros, with the rest of the increased revenue being derived from measures to combat tax fraud and the revenue-raising measures adopted by regional governments. Overall, these measures have averted a collapse in



revenues, and the total revenue of the autonomous regions was 2.37 billion euros higher in 2012 than in 2011.

In evaluating the fiscal consolidation policies adopted by Spain in 2012, we must refer to what is termed in economic language the reduction in the **primary structural deficit**, which excludes the effects of increased costs and reduced revenues caused by the economic cycle. The IMF has acknowledged that **Spain has lowered its primary structural deficit by 3.1 pp of GDP**, a considerably better result than that achieved by other EU countries.

## A. THE BUDGET STABILITY AND FINANCIAL SUSTAINABILITY ACT

The Budget Stability and Financial Sustainability Act, the first reform adopted by the present Government, constitutes the reference framework for budget consolidation at all levels of government.

The fundamental aspects of this law, unlike the previous legislation, are its application to local, regional and national government, improved transparency at all levels of administration and added budget execution control capabilities provided by new instruments and by preventive and corrective measures.

According to the new law, applicable to all levels of the public sector, structural equilibrium must be maintained, although a structural deficit of up to 0.4% of GDP is allowable when structural reforms with a long-term budgetary impact are carried out.

Exceptionally, the State and the autonomous regions may present a structural deficit following the occurrence of natural disasters, a severe economic recession or situations of extraordinary emergency. This law is intended to reinforce the idea of stability at all levels of government, not just in temporary, specific circumstances, but on a permanent basis.

In addition, to ensure budget stability, compliance with the goals established in the law and with the new spending rules will be more closely monitored. To this end, **automatic preventive measures** (not previously existent) will come into action **and corrective measures** will be taken should any level of government fail to comply with the legal requirements; these measures range from fines to the despatch of fact-finding missions to the defaulting administration.

These reforms will make legal regulations clearer and more consistent and convey the ideas of equality in budget requirements, of responsibility and of institutional loyalty within all levels of government.

Without doubt, the success of the fiscal consolidation achieved in 2012 was due to the implementation of the Budget Stability and Financial Sustainability Act.

Capacity/Funding needs of Public Administration	% of GDP	
	2011*	2012
<b>Administration</b>		
GSA	-5.13	-4.11
Autonomous Communities	-3.31	-1.76
Local Governments	-0.45	-0.15
Social Security	-0.07	-0.97
<b>Total Public Administrations</b>	<b>-8.96</b>	<b>-6.98</b>
Financial Assistance	0.48	3.65
<b>General government with financial assistance</b>	<b>-9.44</b>	<b>-10.63</b>

The distribution of the 2012 public deficit clearly shows that consolidation was shared among the different levels of government. Discounting the costs of bank restructuring, the central government deficit for 2012 fell by 1 pp of GDP, to 4.1%. That of the autonomous regions was 1.76% of GDP, having fallen by 1.55 pp, while the local authorities (provincial councils, city councils, town councils and local boards) reduced their deficit by 0.3 pp to 0.15% of GDP and amply met the target of 0.3% of GDP.

Finally, in a context of economic and employment activity that deteriorated at a more intense rate than had initially been foreseen, the Social Security system recorded a deficit in 2012 of 0.97% of GDP, which was 0.9 pp higher than the 0.07% recorded in 2011, although still within the target of 1%.

In 2012, all the regional governments presented their economic-financial plans for budget stability for the period 2012-2014, with measures to increase revenues and to cut spending. The total savings of these measures (those approved in the financial stability plans for 2012-2014 together with those approved subsequently) amounted to 12.47 billion euros.

The above-mentioned local authorities amply met their deficit target for 2012, a result in which a key role was played by the 2,700 adjustment plans presented by the local authorities that participated in the Supplier Payment Plan. With respect to 2011, the measures taken by the local authorities increased their revenue by 1.11 billion euros and reduced costs by 1.47 billion euros.

A significant proportion of these budget adjustments consisted of the **restructuring and rationalisation of public sector companies and foundations** at all levels of government. As a result, the number of public enterprises, both regional and local, has been rationalised and their staff levels reduced. In this respect, as at 1 January 2013, the regional governments had eliminated 383 public enterprises and had created 75 new ones, while a further 227 were in the process of being abolished. With the net reduction of 535 entities, thus, the original target of 515 has been exceeded. Implementation of the Plan will be continued, with a further 193 entities due to disappear, making a total of 728 net reductions. **This process will produce estimated savings for the period 2011-2013 of over 1.5 billion euros.** A total of 5,863 jobs will be eliminated, generating savings of 130 million euros.

## B. INDEPENDENT FISCAL RESPONSIBILITY AUTHORITY

As a further step toward its goal of increasing the transparency and accountability of public managers, the Government has initiated procedures to create an Independent Fiscal Responsibility Authority (IFRA), to ensure strict compliance with the principles of budget stability and financial sustainability at all levels of government.

To that end, IFRA will carry out a continuous assessment of the budget cycle, the public debt and the macroeconomic forecasts underlying medium-term draft budgets and scenarios. These measures may not be adopted without a favourable report from IFRA, which will also discuss the development and implementation of fiscal policies, in order to detect, at the earliest possible stage, any deviations from the goals established. Additionally, if it considers it appropriate, IFRA may express its views with respect to compliance with the targets established for budget execution, fiscal stability, the control of public debt and spending, the long-term sustainability of public finance, and any other matter of legitimate interest.

IFRA will be a public law entity endowed with legal personality and full public and private capabilities, which will function autonomously and with functional independence from other government institutions. To ensure the independence and effectiveness of its actions, IFRA will be provided with the necessary human and material resources, employing qualified, accredited professionals with the experience necessary to perform the special tasks required of them. The law creating this authority has been referred to the Council of State for its opinion and is expected to be debated in Parliament in July, so that it can be adopted before the approval of the State Budget for 2014 .



## C. TRANSPARENCY, ACCESS TO INFORMATION AND GOOD GOVERNANCE BILL

This Bill, currently under consideration by Parliament, will contribute to strengthening fiscal discipline, by imposing various legal obligations in the area of public administration and, in particular, regarding the management of economic resources and the respect for budgetary stability. Failure to comply with these obligations is addressed by a specific regime of breaches and penalties that may include ineligibility for public office. The Bill has a three-fold goal: to increase and improve transparency in public activity, through active disclosure obligations applicable to all levels of government and other public entities; to recognise and guarantee access to information as a subjective and objective right; and to establish the obligations of good governance to be met by public officials, with legal consequences for non-compliance, thus constituting a requirement of accountability by those who carry out significant activities in the public domain.

This law is the nucleus of the drive for reform in the area of transparency and good governance. Nevertheless, during 2012 the Government took other important steps to improve information transparency, for example, by improving the statistical quality of the budget values published by local and regional administrations. In 2013, for the first time, monthly budget execution data are available for all levels of government, in terms of national accounts (except for the local corporations, which publish these data quarterly), which facilitates the control of public finances at all levels of government.

## D. CONSOLIDATION MEASURES TO RATIONALISE GOVERNMENT SPENDING

Many of the Government's consolidation measures are focused on shrinking administrative structures and rationalising personnel and current costs. In the public sector, the Government has introduced various measures, most of which are aimed at bringing working conditions in line with those applied in the private sector and reducing the proportion of wages and salaries within overall public spending. As a result of the economic crisis, staffing levels in the private sector have been reduced drastically, but the same is not true of the public sector where, despite the crisis, the number of employees increased until the third quarter of 2011.

**The reforms made were absolutely necessary**, both to ensure the fulfilment of Spain's commitments regarding public spending and the deficit, and also to improve the efficiency, productivity and competitiveness of our economy. Among the urgent short-term measures introduced to reduce spending in the public sector are the wage freeze imposed in 2012 and 2013, the non-payment in 2012 of one of the customary bi-annual bonuses, additional restrictions on the recruitment of temporary staff and the non-filling of job vacancies that arise.

As well as the above measures, the Government has approved others of a structural nature, most of which are set out in Royal Decree-Law 3/2012 and 20/2012. Among these, the following are especially important:

### a) Concerning public employment.

- **A freeze on public-sector employment for 2012, 2013 and 2014, with a staff replacement rate of zero in most cases and of 10% in certain specific areas, such as fraud prevention.**
- **The legal empowerment to dismiss non-career public-sector staff for economic, technical, organisational or production reasons.**
- **The reduction of leave corresponding to personal-allowance days and the abolition of supplements to the latter.**
- **The modification of conditions for the recognition and maintenance of temporary disability status.**
- **The age requirement to access the retirement pension rises from 65 to 67 years**, with a transitional period of 14 years for the progressive implementation of this measure.

- **The working hours in the public sector are increased, to at least 37.5 hours per week.**
- **Special measures for public sector employment in education and health care.**
- **A plan to reduce absenteeism.**
- **The modification of the regime of incompatibilities.**
- **The modification of the free time allowed for trade union activities.**

## SAVINGS RESULTING FROM STRUCTURAL MEASURES TAKEN ON PUBLIC STAFF

MEASURE	2012			2013			2014		
	STATE	ACs	LGs	STATE	ACs	LGs	STATE	ACs	LGs
Suppression of freely disposable three days.				101	339	94	98	329	92
Removal of additional freely disposable days and additional vacation days by seniority.				162	543	151	157	528	147
Modification of the payment regime of public servants and their economic benefits during temporary disability (includes MUFACE not include ISFAS or MUGEJU).	35	116	32	81	270	75	78	263	73
Extending the modification of the payment regime during temporary disability (TD) to Defense and Justice.									
Additional savings through absenteeism control, discounted payments in case of absence without justification of TD.				7	21	7	7	21	7
Increased working hours of public employees up to 37h. 30 m. weekly.		972	286		945	278		919	270
Modification of incompatibilities' regime.				5			5		
Reduction of trade union leave.	5	17	5	12	40	11	12	39	11
Public sector recruitment freeze without replacement.				360	1,080	360	700	2,100	700
<b>SUBTOTAL</b>	<b>40</b>	<b>1,105</b>	<b>323</b>	<b>728</b>	<b>3,238</b>	<b>976</b>	<b>1,057</b>	<b>4,199</b>	<b>1,300</b>

Source: Report on Royal Decree-Law 20/2012; except for the increase in working hours, sourced by the authors. These data do not include the savings produced by Royal Decree-Laws No. 14/2012 and No. 16/2012 (education and health care).

### b) Rationalisation and restructuring of the public sector.

In early 2012, the Government adopted various **measures to rationalise the public sector, making it better organised, more appropriate in size and with lower operating costs**. Thus, Royal Decree 1823/2011, which restructured departments, and Royal Decree 1887/2011, which established the basic organisational structure of ministerial departments (in addition to various Royal Decrees to restructure certain ministries) significantly **reduced the number of senior officials and governing bodies within the General State Administration**.

Royal Decree Law 20/2012, of 14 July, regulates the **incompatibility of indemnity or compensatory pensions for retired senior officials**, to ensure that this provision is perceived only when the person in question performs no other gainful activity in the public or the private sector.

Additional Provision No. 8 of Royal Decree-Law 3/2012, of 10 February (subsequently approved as Act 3/2012), on urgent measures to reform the labour market, limits the **compensation payable on ter-**

**mination of a commercial contract and/or to senior officials** of national public-sector entities, prohibiting such payments to public officials or career civil servants who could return to work in the public sector. This Provision also determines the **remuneration structure** for employment contracts of directors of national public enterprises (distinguishing between the basic salary and an additional element comprised of a job-related complement and a variable one).

Royal Decree 451/2012, of 5 March, which regulates the **remuneration of senior officials in public-sector companies and other national public-sector entities**, and which was issued to further develop the provisions of the above-mentioned Additional Provision No. 8, extends the remuneration structure set out in the latter measure to all public-sector officials with a senior management contract. It also classifies all such entities into three groups (depending on parameters such as the size of the workforce and the volume of business), to determine, among other aspects, **the maximum number of members of the Board or highest governing body of the entity**, its organisational structure (maximum and minimum number of directors) and the maximum levels of executive compensation.

In implementation of this Royal Decree, various orders were communicated by the Ministry of Finance and Public Administration, to classify all national public-sector entities. A total of 353 entities were classified, as shown below.

<b>Consortiums</b>	<b>25</b>
<b>Businesses and Other Governmental Entities</b>	<b>68</b>
Corporate Public Entities	14
Public Entities (D.A 9ª y 10ª LOFAGE)	16
Regulators and Supervisors Public Bodies	7
Other public bodies	31
<b>Foundations</b>	<b>53</b>
<b>Autonomous Organisms</b>	<b>66</b>
<b>Public companies</b>	<b>141</b>
<b>TOTAL</b>	<b>353</b>

The Government intends this scheme for the rationalisation of governance structures and of senior officials' remuneration to be extended to local and regional governments. For this reason, paragraph seven of Additional Provision No. 8 of Act 3/2012 states that the system of limitations on commercial or senior official contract indemnities is extensible to local and regional governments. In the same vein, the Local Government Rationalisation and Sustainability Bill contains provisions on governance and the remuneration of directors of local entities. The goals pursued by these provisions are similar to those of Royal Decree 451/2012.

On 16 March 2012, the Council of Ministers approved the **Plan for the Restructuring and Rationalisation of National Public-Sector Companies and Foundations**.

- With respect to **State companies**, the most important aspects of the Plan relate to mergers, the extinction of mercantile companies following the transfer to another company of their assets and

liabilities, and the dissolution of companies. The Plan also refers to the change of ownership of the postal-service company Correos y Telégrafos, S.A. In total, the Plan envisages **the disappearance of 24 State mercantile companies**. In addition, the Council of Ministers decided to **eliminate the State's participation** in 43 companies (eight with a majority State holding) and to accelerate the process of liquidating a further 13. Finally, various operations were taken regarding State public-sector foundations, six of which would be liquidated.

The application of this set of measures has produced significant savings, including the following:

- a. **The reduction in the number of senior officials and Sub-Directorates-General within the General State Administration**, in accordance with various Royal Decrees, has led to savings of 4.8 million euros with respect to Ministerial structures and 390,683 euros in dependent public entities.
- b. **The incompatibility of indemnity or compensatory pensions for retired** senior officials has saved 1.2 million euros in 2012, and this will rise to 3.4 million euros in 2013.
- c. **The classification of State mercantile companies** (and the consequent limitations on the number of Board members) has led to the departure of 113 directors, producing annual savings of 993,400 euros. When all the operations stipulated in the Council of Ministers decision are applied, a further 151 directors will be eliminated (saving another 900,638 euros). Additional savings of 652,328 euros will be achieved by reducing the payments for attendance at Board meetings of companies reclassified in a lower group. In total, there will be 264 fewer such directors (a reduction of about 36%) at an overall saving of 2.5 million euros.
- d. **Measures relating to the directors of public-sector companies and entities**. The new rules referred to above produced savings from the suppression of directorships, reductions in remuneration and limitations on termination compensation.

These savings (distinguishing between State mercantile companies and other entities) are summarised in the following table.

Public companies	
Elimination of posts	3,470,310 €
Reduction of wages	2,468,660 €
Compensations	6,354,445 €
<b>Subtotal</b>	<b>12,293,415 €</b>
Other public bodies	
Elimination of posts	2,067,931 €
Reduction of wages	2,066,646 €
Compensations	1,663,828 €
<b>Subtotal</b>	<b>5,798,405 €</b>
TOTAL	
	<b>18,091,820 €</b>

Finally, Act 3/2012, of 4 June, created the **National Commission on Markets and Competition**, as a public body responsible for ensuring, protecting and promoting the proper functioning, transparency and existence of effective competition in all markets and sectors. This Commission performs the functions

related to the proper functioning of markets that were formerly attributed to eight regulatory bodies, **and is expected to produce annual savings of 28.15 million euros.**

With respect to **the planning of State-owned real estate and the reform of the national vehicle fleet**, CORA has analysed the studies carried out in this area and has made some additional proposals. These are discussed in the section in this Report on the Sub-Commission for the Management of Common Resources and Services.

## *E. OTHER STRUCTURAL REFORMS TO ENHANCE GOVERNMENT EFFICIENCY*

**The Market Unity Guarantee Bill**, to be presented to Parliament in July, is intended to simplify administrative proceedings regarding business start-up and activity in the different autonomous regions and the free movement of goods and services across the country. The law seeks to achieve mutual trust and responsibility among all levels of government, through prior and subsequent collaboration in areas of control and supervision. The Bill introduces mechanisms for cooperation among administrations in order to ensure consistency in the development of regulatory projects.

To support commercial activity, **Royal Decree-Law 19/2012, of 25 May introduces urgent measures to liberalise trade and certain services**, eliminating the need to obtain a licence prior to opening business premises, when the retail display and sales space is less than 300 square metres, and instead requiring only a declaration of responsibility. In addition, trading hours and sales promotions are further liberalised, thus reducing administrative involvement and red tape. Under the Entrepreneurship Support and their Internationalisation Draft Law, the level of the licence threshold will be raised.

## 6. CONCLUSIONS

**Since early 2012, important steps have been taken to contain costs and rationalise administrative structures.** These structural measures have laid the foundations for reform in Spain and have achieved undeniable advances toward greater flexibility in the public sector, where, moreover, a significant degree of downsizing is under way.

Our analysis of government reform processes carried out elsewhere shows that to a significant degree they contain measures such as those implemented in Spain during the present legislature.

The next stage in **the process of administrative reform will be very important, both quantitatively and qualitatively.**

In the first place, **the Local Government Rationalisation and Sustainability Bill** clarifies municipal powers to avoid duplication and limits the exercise of “inappropriate competencies” according to efficiency criteria. The following measures are considered:

- For the first time, municipal powers are defined by law, eliminating duplication and inappropriate competencies, thus bringing local government in line with the principles of budget stability and financial sustainability.
- A transitional period of five years is established for the transfer of competencies in health care. Education competencies will be determined in accordance with the rules governing the funding system for the autonomous regions and local governments. In the future, both education and health care will be provided exclusively by the autonomous regions.
- Associations of local authorities and smaller entities which fail to submit their accounts within three months will be extinguished on the entry into force of this law.
- The role of municipal comptrollers, as local government officials certified to work nationwide, will be reinforced.

- Economic initiative will be promoted, by limiting requirements for administrative authorisations to undertake business activities and by increasing the information transparency requirements on the management model adopted by a local entity that provides services to the public.
- Limits will be placed on the number of temporary staff employed and of full-time public officials, based on the population of the municipality.
- The salaries of local government officials will be determined in the annual Budget Act, according to the population of the municipality, and may not exceed that of the Secretary of State. This salary limitation is expected to produce savings of 1.2 billion euros.

Second, with respect to the General State Administration, but also taking into account possible overlaps with the regions, the work of the **Commission for Public Administration Reform** and of its sub-commissions has enabled a broad range of measures to be determined, as set out in the following chapters of this report.

Since the restoration of democracy, both the country and the Government have undergone significant changes, **but there is a widespread perception that these have been implemented faster in the private sector. This difference between the private and public sectors in their rate of adaptation to a changing reality highlights the need for genuine government reform. And this has now begun. Since 2012, the 'slimming down' of government, demanded by many, has been taking place. The reduction of 26.2 billion euros in public spending and of 374,800 jobs in public employment, described above, testify to this.**

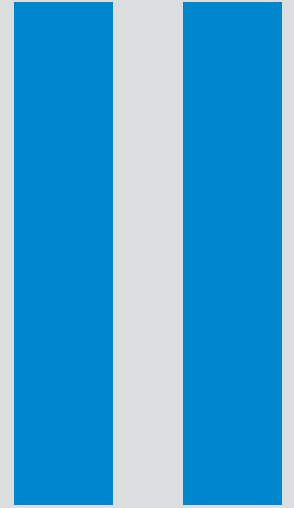
Furthermore, this 'slimming down' is not temporary, and is not even the ultimate consequence of the crisis; since the beginning of the legislature, structural changes, based on criteria of efficiency, have been introduced. **The government reforms undertaken in the last year and a half, at the initiative of the Spanish Government, have been both numerous and momentous.**

**The measures described above, in sum, represent the structural reform of government administrations addressed by the Spanish Government since the beginning of its term of office. As a result, by the conclusion of these four years of government, the public sector will have made total cost savings of 37.62 billion euros, and when the reforms are fully implemented, yearly savings (with respect to 2011) of 17.53 billion euros will be made.**

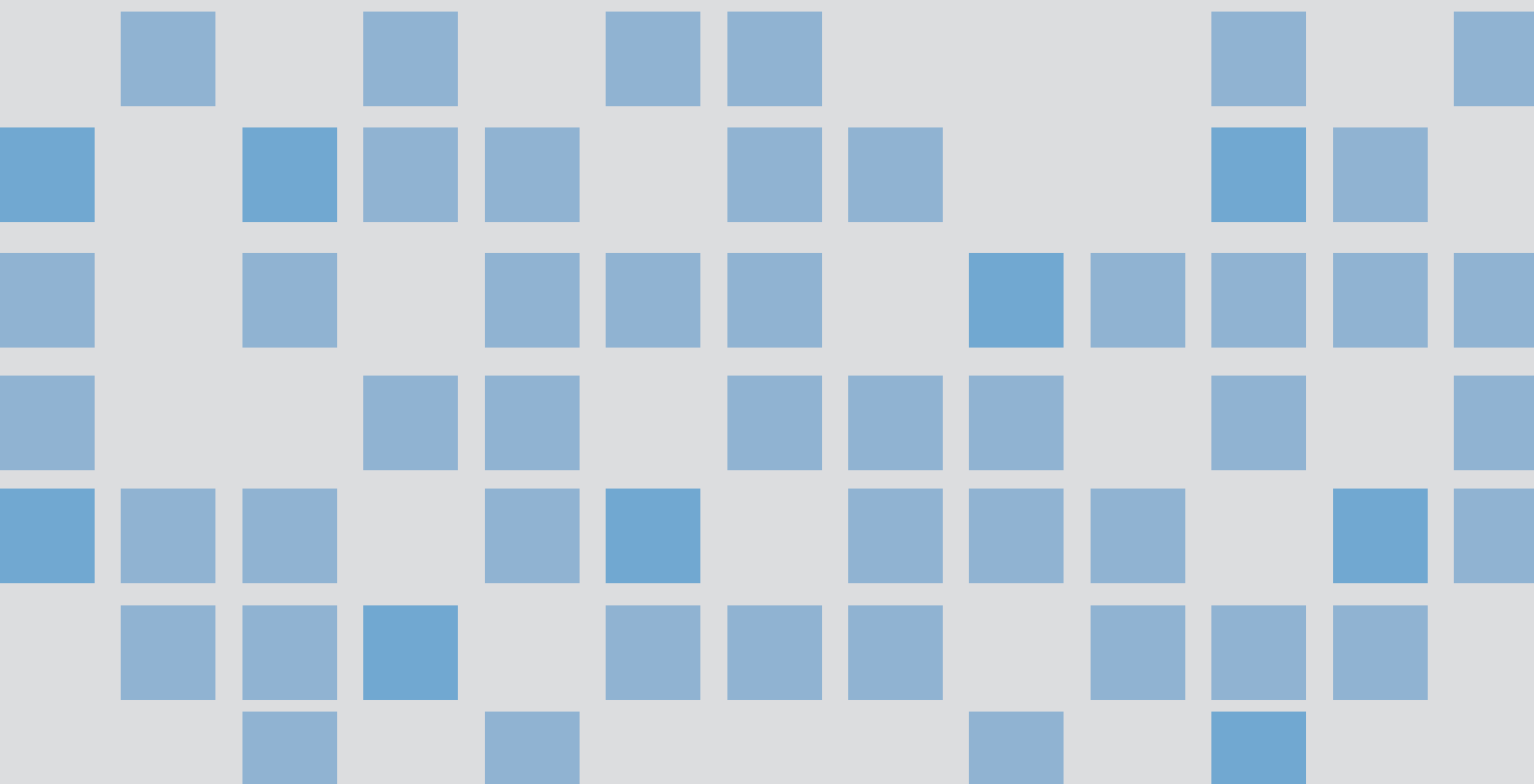
**Through administrative rationalisation, the abolition of organisations and structures, the elimination of overlaps and the improved management of resources and services, as described in the CORA report, total accumulated savings of 6.44 billion euros will be achieved in the three years of implementation of these government reform measures, in addition to the above-stated savings obtained from measures taken in public-sector employment. Moreover, when the reforms are fully effective, the savings for individuals and businesses will amount to 16.30 billion euros.**

It should be noted that, for some of the most significant structural measures—both those considered in this report and those already implemented or in the process of approval—it is not possible to determine their financial impact a priori, and the values stated should be considered to err on the side of caution.

The above figures do not include the significant reduction in public spending achieved as a result of the structural reforms made by the autonomous regions and by local governments in their respective adjustment plans, referred to the corresponding sections of this report, and which constitute a fundamental aspect of the endeavours made by the nation as a whole.



# Commission for public Administration Reform (CORA)







## II. COMMISSION FOR PUBLIC ADMINISTRATION REFORM (CORA)

An essential component of the Government Reform Programme is the reform of the Spanish Public Administrations. Spain needs an austere and efficient public administration that will be a competitive asset for our country. Above and beyond the need to take on a comprehensive analysis of the administrative reform, two imperatives had to be addressed:

- The last Conference of Regional (Autonomous Community) Presidents agreed on the creation of a working group within the corresponding Sectoral Conference that would draw up an administrative rationalisation programme focused on eliminating bureaucratic complications, simplifying standards and procedures and preventing duplications.
- Within the programme for the application of the Liquidity Fund for Regional Governments, a provision was made for the creation of a working group under the Fiscal and Financial Policy Council that would establish a best practices code for rationalising expenditures and increasing savings.

The need arose to conduct a comprehensive study which would also give concrete aims to both working groups. CORA was thus created through the Council of Ministers Decision of 26 October 2012.

### Designations, composition and functioning

CORA was established under the Ministry of Finance and Public Administration through the Secretariat of State for Public Administration. The chairmanship of the Commission was occupied by the Under-Secretary of the Cabinet Office (Ministry of the Presidency) and the deputy chairmanship by the Under-Secretary of the Ministry of Finance and Public Administration. The functions of Secretariat were undertaken by the Director-General of Regional and Local Administration Competence Coordination.

### CORA comprised the following members:

- One representative from each Ministerial Department with minimum rank of Director-General
- One representative from the Inspectorate-General from the Ministry of Finance and Public Administration
- One representative from the Economic Cabinet of the Presidency of the Government
- One representative from the Cabinet of the President of the Government
- One representative from the Cabinet of the Vice-Presidency of the Government

Heads of other General State Administration bodies were invited by the Chairman of the Commission to attend meetings when the circumstances called for it. These had speaking but not voting rights.

### Sub-Commissions

The following Sub-Commissions were created under CORA:

**Administrative Overlap.** The objective of this Sub-Commission was to identify and eliminate duplications and strengthen cooperation mechanisms in order to reduce administrative operational costs. Given that the powers assigned to the local administration were already the subject of reform within a modification project of its Bases Act, it was basically the overlap produced between the General State and Regional Governments which were targeted.

**Administrative Simplification.** This Sub-Commission was assigned to reviewing the bureaucratic barriers to processing administrative procedures with a view to simplification that would ultimately benefit citizens. Particular attention was given to those procedures requiring the participation of other public administrations in order to produce effective outcomes, such as formalities required for start-up businesses. At the Ministry of Finance and Public Administration, it was the Directorate-General of Administrative Modernisation, Procedures and e-Government who stewarded the projects currently underway.

**Common Services and Resources.** The objective of this Sub-Commission was to centralise management processes that could be unified or coordinated to maximise public resources. For this task, it was indispensable to study successful models implemented in Spanish business holdings that provided information and collaboration.

**Institutional Administration.** This Sub-Commission analysed the different typologies of bodies comprising the institutional administration and reviewed the regulatory framework and models deemed optimum for them. The necessary modifications were then recommended for the list of existing bodies, emanating from information and proposals from different Ministerial Departments.

These were standing sub-commissions that would bring in other administrative senior staff and representatives from the private sector. They submitted progress reports periodically at Commission plenary sessions.

The Council of Ministers Decision charged CORA with proposing rules and actions aimed at improving administrative efficiency in different matters: elimination of overlap, strengthening of cooperation mechanisms, document simplification, review of the typology and regulatory framework of what we denominate the institutional administration and management of common services and resources.

In addition to tackling a comprehensive administrative reform study, Cora was responsible for providing a set of concrete proposals to be considered by working groups configured in other institutional areas.

The Decision established that at the end of the working period, the plenary would take the respective proposals before the Ministry of Finance and Public Administration to be submitted to the Council of Ministers and conveyed to the Conference of Regional Presidents, with a timeline set for completion of the Commission work by 30 June 2013.

CORA's overall review of the public administration strove to achieve **more effective and efficient public activity, curbing costs without reducing the quality of services rendered.**

Society participation was guaranteed through the use of a **Citizen Suggestion Box** that received over 2000 suggestions. **An Advisory Board** was formed, with the participation of:

- **Public-sector employment representatives**, allowing for the participation of the three main unions in the public administration (**Independent and Civil Service Central Union - CSIF. Workers Commission - CC.OO. General Workers Union - UGT**)
- **Business representation**, with the intervention of representatives from the business leaders' associations CEOE and CEPYME
- **The Office of the Ombudsman**, represented by the Secretary-General
- **A University representative**, the Chair of Administrative Law, Tomás Ramón Fernández Rodríguez
- **A citizen representative**, from the Consumers and Users Council
- One representative from the following **organisations**:
  - FEDECA (Federation of Association of Senior Officials of the General State Administration)
  - ATA (National Federation of Self-employed Workers Associations)
  - AEC (Spanish Association of Consulting Firms)
  - Higher Council of Chambers
  - IEF (Family Business Institute)

The duties of this Advisory Board focused on meetings for reporting on progress, methodologies implemented and the establishment of time lines. The board also registered their own contributions as a body representing the end users of the efforts of the Commission.

In order to increase the participation of social agents in the tasks carried out by the Commission and pool together information from citizen, business and third sector contributions, the CORA plenary decided to **set up an e-suggestion box to gather citizen suggestions** regarding public administration reform. For practical purposes, these suggestions were only directed to two of the Commission's concerns: simplification and overlap in the administration. The Sub-Commissions for Institutional Administration and Common Resources handled internal areas of government that are more complex on a technical and regulatory level, and thus were not included.

The e-suggestion box was launched 2 January 2013. Access to it was set up through the Presidency of the Government and Ministry of Finance and Public Administration web sites with the link to the Commission: <http://run.gob.es/cora> and to the suggestion boxes: <http://run.gob.es/buzon-duplicidades> and <http://run.gob.es/buzon-trabas>.

Citizens were asked to complete a form with very simple information where the only obligatory data was name, surname, Tax Identification Number and an e-mail address. They were also asked for information in fold-out menus to complete statistical studies such as province, sex and age range. The rest of items to be filled in by citizens were: type of formality (Licenses, Assistance, Aid, Information, Services and Other Procedures) or Overlap (between State agencies, between State agencies and regions or between State, Regional and Local administrations, the subject, a description of it and the citizen's suggestion on the matter.

The e-suggestion box was open until 31 March 2013 and the observations gathered have been very useful for CORA's work. In the section regarding **bureaucratic formalities, 903 suggestions were collected**, 243 of which dealt with "vital events" (acts of vital importance to citizens). The suggestions demonstrate citizens' desire that the administration refrain from "weighing them down" with red tape; to not have to stand in queues, wait or have to supply documents already in the State's possession; the desire to have one single channel to access information in order to solve paperwork without a maze of complications. Citizens desired to understand clearly what the rules dictate, and that these be explained once and simply. Citizens wanted much more e-Government guaranteeing 24/7 service all year round.

In the section regarding **administrative overlap, the box collected 1336 suggestions**. This demonstrates that citizens are concerned about the duplication of bodies and jurisdictions among public administrations and the ineffectiveness and expense that this represents. They are also concerned with the proliferation and growth of agencies in territorial administrations that not only generate costs but also hinder a clear demarcation of jurisdictions.

All initiatives contributed were read and considered by the competent sub-commissions and when appropriate, sent to the Departments in charge for reporting purposes.

In the following sections of this report, we will first present the horizontal measures that cross-cut the four Sub-Commissions. Secondly, chapters will be dedicated to describing how the work was carried out and providing a summary of each respective Sub-Commission proposal. A file on each of the measures and their justification reports are included in the Annex to Conclusions, Proposals and Recommendations.

Savings calculations have been done for the cases of the State and Regions, based on the budgetary items of the last two quarters and on the experiences in these years of comparative savings for each case. Calculations of savings to citizens have been based on the "standard cost model" applied in the EU to assess the savings derived from reducing administrative costs or by intensifying the use of e-Government. In both cases, the operations carried out appear in each of the dossiers corresponding to each measure.

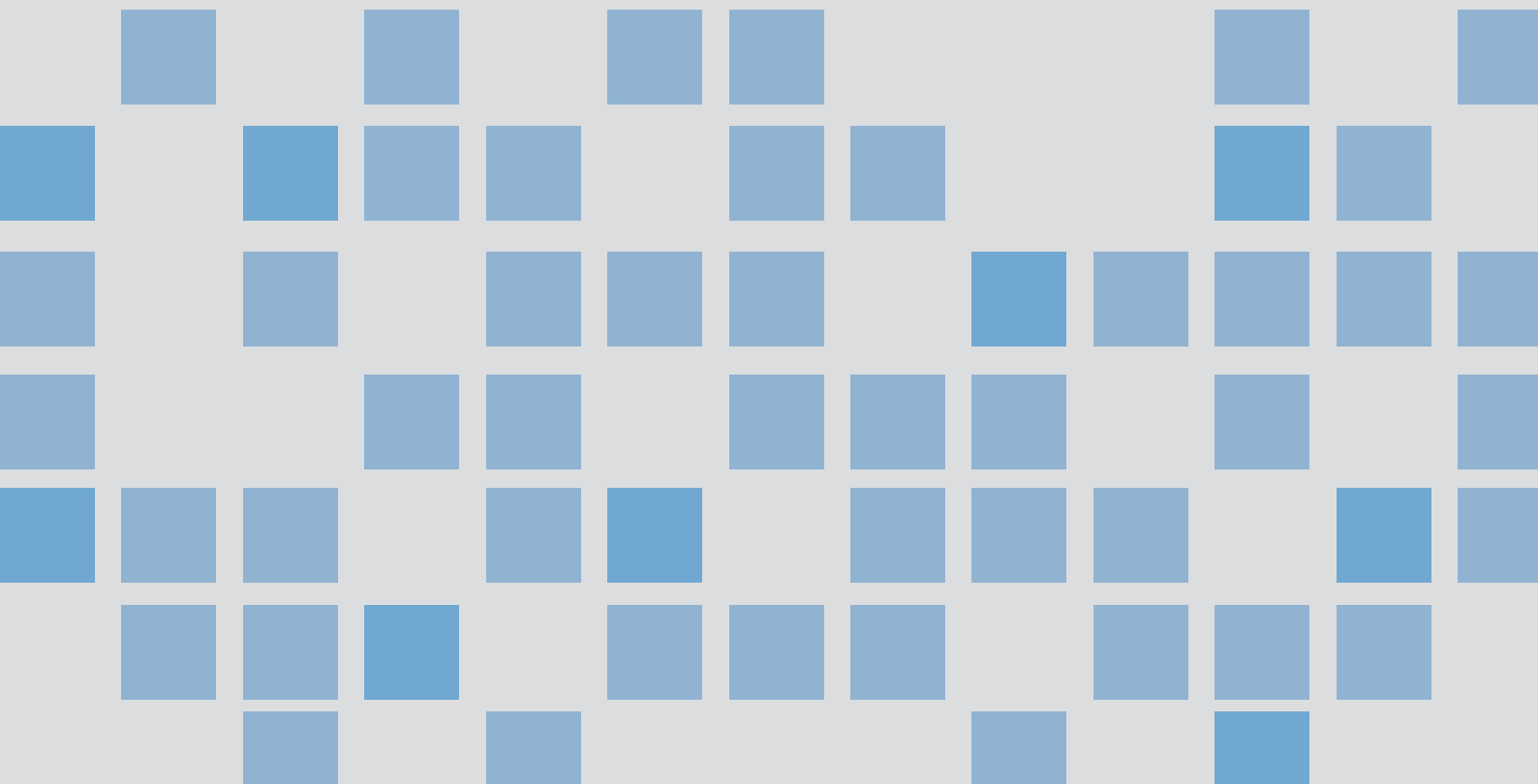
In this manner, all of the proposed measure dossiers include, whenever possible, an economic quantification of the estimated impact for the upcoming three year period from entry into force. This applies to the State, Regional Governments, citizens and businesses. Here it is necessary to consider that the term "im-

impact on General State budget” refers to the annual savings calculated regarding the initial budget before the concrete measure was adopted. This does reflect the savings that will be registered each year in the General Budget as a consequence of the specific reform being applied. As an example of this, the impact seen in the first year does include savings equivalent to the spending cuts made in year one. The impact on the budget calculated in the second and third year reflects the savings made in the initial budget. The amount that exceeds the values included in the period immediately prior to this one will have a reducing effect on expenditure as well as deficit compared to the previous year.

**From the moment of its formation in October of 2012, CORA has reviewed the proposals presented by the Ministries for simplification, elimination of overlap and management improvement. In some cases, the decision was made for immediate implementation following viability and effectiveness assessments, such as in the plans for the national vehicle fleet, national real estate assets management and the three-step start-up programme for businesses. In other cases, proposals were incorporated into regulatory projects already underway, such as the simplification measures for environmental issues. The remaining proposals that appear in the report will be made effective following publication and in accordance with the timeline laid out for each of them.**



# General measures







## III. GENERAL MEASURES

### 1. IMPLEMENTATION OF A PRODUCTIVITY AND EFFICIENCY ASSESSMENT SYSTEM

#### Present situation

**The use of standardised methods of evaluation**, appropriate to the characteristics of the different activities of public-sector administration, is crucial to the appropriate management of available resources and facilitates the achievement of effectiveness, efficiency, economy and quality. However, the present situation with respect to these methods is heterogeneous and irregularly distributed.

Many areas of government already have such evaluation methods, especially in large departments such as the Tax Authority, the different areas of the Ministry of Economy and Finance and the peripheral services of the Ministry of Employment. This is also the case of some central services that prepare annual activity plans, together with goals and indicators for assessing compliance. To determine the overall situation, it is first necessary to map out government structures and identify the areas lacking these systems. Where they already exist, their suitability for purpose must be checked and, when necessary, adapted. Overall, the intention is to advance toward greater homogeneity of the evaluation systems and indicators used, while maintaining their suitability for the specific purposes of each unit.

The design of a control system for organisation management must be consistent with its strategy and structure, in order to ensure that the actions and outcomes of the decisions taken are relevant to and consistent with the organisation's goals. For public bodies, such control and monitoring mechanisms could incorporate management indicators.

In order to **establish a management indicator system** with information on the degree of achievement of targets, it is essential to know whether the organisation is acting correctly or whether action should be taken to correct discrepancies. Without performance indicators providing systematic information of the outcomes achieved, it is not feasible to determine or evaluate, with any degree of confidence, the organisation's levels of effectiveness, efficiency and quality. The introduction of such indicators forms part of the changing values being applied within government systems, and contributes greater transparency to public administration.

Management indicators provide both quantitative and qualitative information on an organisation's performance, identify any deviation from required patterns of operation and enable timely corrective measures to be taken. Good use of these indicators is crucial for the optimal management of organisational resources.

These systems are focused on the analysis and use of information regarding management and service performance so that the organisation can make the procedural or substantive modifications necessary to improve management quality and effectiveness, thus facilitating decision-making and enabling effective compliance with the programmes set out for each department.

The implementation of this methodology requires the existence of automated control mechanisms so that source data can be obtained immediately from the indicators, thus minimising the cost to the organisation being assessed. Moreover, effective methods of internal control must be applied to these systems to ensure their proper functioning and the provision of high quality data.

The degree of complexity of the indicators employed is usually proportional to the requirements of evaluation and control, and in practice range from simple indicators of the volume of activity, or measures of procedure duration, to complex efficiency-measurement systems examining diverse production and cost variables.

The widespread application of methods to assess government activity is relevant to some of the provisions of the Transparency, Access to Information and Good Governance Bill. This legislation not only requires the setting of specific objectives, activities and estimates of their time of completion, but also states

that the degree of compliance and the results achieved should be periodically evaluated and published, together with the measurement and assessment indicators used.

Currently, diverse evaluation methods are applied in different areas of government and General State Administration units have no common methodology for performing comparisons. Among other aims, the proposal is made to:

1. **Overcome delays in resolving proceedings by the competent units.**
2. **Eliminate unused functional capacities in certain units where this capacity could be established.**
3. **Introduce departmental goals in comparison with the resources made available.**

By measuring and comparing the delays experienced in resolving cases, corrective action can be taken and, through the appropriate allocation of resources, these times can be reduced. Similarly, productivity can be raised by detecting unused functional capacities and less efficient units.

Even where delays cannot be measured nor comparisons applied, standard indicators of activity can be established, to be judged against a cost yardstick. Such a measure would require a suitable framework of productivity/efficiency indicators. This general framework would then be adapted by each department or unit to its specific requirements, to optimise the use made of the model. Important factors in deciding the indicators to be adopted are the complexity or otherwise of quantifying the variables in question, the need to minimise costs to the reporting organisation and the experience gained elsewhere within the General State Administration.

## Proposal

### Design and implementation of systems to measure productivity/efficiency in administrative organisations

Basically, all administrative units should have appropriate methods for evaluating their activity.

**Methods will be established, where possible, to measure the time spent in processing files and/or to compare the capabilities of departments;** otherwise, standardised targets and indicators will be applied.

Where such mechanisms have already been implemented, they will be assessed for suitability and standardised in accordance with the purposes of the system.

The system will be implemented by the ministries' joint services, using the resources already available. The Ministry of Finance and Public Administration will support and promote the application of the proposal, offering a means of measuring file-processing times, a system for comparing the work capacities available and a set of standardised indicators and targets.

Ministry joint services will audit and analyse the quality of the information provided by the departments involved, in sufficient time to accompany the corresponding outcome reports.

The system methodology used and its main results will be made public on the websites of the entities involved and in the future Transparency Portal.

### 2. MODIFICATION OF METHODOLOGY FOR DRAFTING CHAPTERS II AND VI OF THE GENERAL STATE BUDGET (CURRENT EXPENDITURE FOR GOODS AND SERVICES AND REAL INVESTMENT)

#### Present situation

At present, these chapters are budgeted by observing the anticipated needs for the year, the budgetary stability objectives established by the Ministry of Finance and Public Administration and the degree of implementation during the previous year, without any methodical, item-by-item analysis being made of whether the proposed expenditure is optimal for the needs in question.

## Proposal

To better allocate budgetary resources for current expenditure on goods and services and real investment, the budgeting method should quantify the credits allocated in each respect, so that activities of a cross-cutting nature carried out by different departments can be budgeted in accordance with the most efficient standards, to be determined either from best practices or from a theoretical analysis, and thus optimise the value obtained from the financial resources applied. In the budget process, in which the interaction between total costs and the horizontal implementation of spending cuts (or increases) determines the funds made available, complementary analytical criteria will be introduced to quantify the allocation of funds.

The progressive introduction of these criteria requires a previous study of the costs recorded in Budget Chapters 2 and 6 that are of a similar nature, in order to objectively identify (at least) the following parameters:

1. **Quantity.** The volume of goods and services needed for each associated activity to be efficiently provided.
2. **Price.** Cost per unit (which may decrease if demand is high) of the goods and/or services.

Identifying the above parameters—for costs of a similar nature—for subsequent inclusion in the quantification of budget appropriations involves complex tasks which, in the current General State Administration structure, are not specifically allocated to any management centre. The approach required, thus, is one in which analytical budgeting criteria are phased in gradually, for all costs to which this process can be applied, as and when the cost assessors calculate reference indicators, together with the adjustment variables applicable in non-standard situations and the mechanisms for their application. Implementation of a straightforward standardisation service, prior to obtaining a practical budgeting tool, would require the following tasks to be performed:

1. Examine the present contracts and situations in place to provide the service.
2. Perform a statistical and qualitative analysis of these contracts, clarifying:
  - The average level of service required. For example, if the service were the cleaning of administrative buildings, the quantity of production units (cleaner/hour) to be assigned to each spatial unit (in m<sup>2</sup>) to obtain the desired result.
  - The average cost of the service.
  - Justified deviations from the mean.
3. Identify best practices compatible with the efficient operation of public services. Minimum quantities required and minimum price at which they can be obtained.
4. Verify the best practices observed, through technical analysis by experts in the management of goods and services.
5. Identify special elements or characteristics that might justify deviations from predetermined standards.
6. Establish a permanent information system on the award of new contracts of this nature.

In parallel, the Directorate-General for Budget must define how these criteria are to be introduced into the budget process. The proposed actions, which need to be implemented gradually, starting with an initial phase or pilot project, will require the application of specialised human resources in a department created

for this purpose, and so the actual deployment schedule will depend on the constitution and provision of this budget evaluation unit.

### 3. CODIFICATION OF THE LAW

#### Present situation

The OECD report on the management and rationalisation of legislative frameworks in Spain in 2000 noted that no systematic reviews were made and that the legal tradition did not include instruments such as mandatory end-of-period reviews or pre-determined dates of expiry. The OECD warned Spain of “the risk of prejudicial legislative rigidity becoming ingrained and hence of rising costs over time, as the legislation would become ever less appropriate to the (constantly changing) circumstances”.

Legal certainty and simplicity have been affected by the profound changes made to the distribution of powers among different levels of government. Therefore, in the framework of the programme to ensure market unity, and taking into account the forthcoming Market Unity Guarantee Bill, the Government has launched a **Legislative Rationalisation Plan**, to analyse the regulations affecting each sector in order to adapt them to the principles and provisions of the Bill. To date, 5,800 rules applicable to 28 economic sectors and which could prejudice market unity have been detected.

However, over and above the existence of duplicate legislation, other factors limit the understandability and security of Spanish legislation. One such element is the “legal mix”, i.e., the inclusion of additional provisions that have nothing to do with the situation addressed in the regulation in question; another is the absence of a comprehensive list of articles and laws repealed by new (amending or reform) regulations at the time of their adoption. According to the Council of State, new laws and regulations increasingly make use of the formula, “all previous rules that are contrary to the present one are hereby revoked”.

Another factor arises from the special situation that has affected Spain in recent years, namely the urgent need to adopt important measures, especially in the economic sphere. As a result, on numerous occasions, legislation has been introduced by means of a Royal Decree-Law, thus producing changes in Spanish positive law. Logically, this regulatory tangle increases costs for citizens and businesses, and adds administrative burdens to all concerned.

The Transparency, Access to Information and Good Governance Bill, which is currently being examined in the Congress of Deputies, contains a **project for regulatory revision and simplification** and obliges all levels of government to review, simplify and, where appropriate, consolidate their rule systems. To this purpose, public administrations are urged to carry out the corresponding studies, to repeal obsolete legislation and to determine, where appropriate, the need for changes, new rules or consolidation.

The Bill also instructs the Secretary of State for Relations with Parliament to prepare a Plan for Regulatory Quality and Simplification and to coordinate the process of regulatory review and simplification with respect to other ministerial departments.

Moreover, to facilitate awareness of the rules and to reduce the burden imposed on companies of staying up to date with the constantly changing regulations that may affect their activity, countries like the United Kingdom have adopted a system of “**common commencement dates**”, such that all regulations affecting business activity take effect on pre-determined dates, known to all companies. The European Commission has recognised the benefits of this system and expressly recommends its use. The “Small Business Act” (2008) lists ten principles that should underlie the design and implementation of policies for SMEs, one such principle being that of “Think Small First”. To put this principle into practice, the following actions, among others, are considered. The Commission will establish, where appropriate, common start dates for legislation and decisions affecting business, and publish an annual list of the rules entering into force; in addition, Member States are invited to consider the introduction of common start dates and annual lists of

the legislation entering into force. Following the approval of the Small Business Act, the Commission has undertaken a pilot project regarding a common date for the entry into force of legislation related to the common market, and which is within the scope of competence of the Directorate General for Enterprise and Industry.

## Proposal

Given the need to address the question of regulatory revision and simplification as soon as possible, the Commission for Public Administration Reform (CORA), in coordination with the Secretary of State for Relations with Parliament, requested various ministries to provide a list of the laws in their respective areas of competence that met two conditions:

- They are relevant to the area of activity concerned.
- They have been subjected to numerous amendments, and are accompanied by complementary provisions.

The objective of this action is to promote the consolidation of such laws, within the competence of the General State Administration, as soon as possible. The ministries in question have provided this information; an order of priority has been determined according to the greater or lesser impact on individuals and companies, and an ordinary law must now be adopted to enable the Government to draft consolidated texts for each of the following laws:

- Act 7/2007, of 12 April, on the Basic Statute for Public-Sector Workers.
- Traffic, Motor Vehicles and Road Safety Act, approved by Royal Legislative Decree 339/1990, of 2 March.
- Sports Act 10/1990, of 15 October.
- Royal Legislative Decree 1/1996, of 12 April, approving the consolidated text of the Intellectual Property Act, regularising, clarifying and harmonising the existing legislation on the subject.
- Act 14/1994, of 1 June, regulating temporary employment agencies.
- Consolidated text of the Workers Statute, approved by Royal Legislative Decree 1/1995 of 24 March.
- Act 31/1995, of 8 November, on the prevention of occupational risks.
- Employment Act 56/2003, of 16 December.
- Consolidated text of the General Social Security Act, approved by Royal Legislative Decree 1/1994, of 20 June.
- Consolidated text of Act 116/1969, of 30 December, and Act 24/1972, of 21 June, regulating the Special Social Security Regime for Workers at Sea, approved by Decree 2864/1974, of 30 August.
- Royal Legislative Decree 1/2001, of 20 July, approving the consolidated text of the Water Act.
- Securities Market Act 24/1988, of 28 July.
- Act 35/2003, of 4 November, on collective investment institutions.
- Legislation relating to credit institutions: Act 13/1994 on the Autonomy of the Bank of Spain; Act 6/2005, on the reorganisation and liquidation of credit institutions; Act 9/2012, on the restructuring and resolution of credit institutions (among others).
- Retail Management Act 7/1996, of 15 January.
- Consolidated text of the General Act on the rights of persons with disabilities and on their social inclusion.

- Act 29/2006, of 26 July, on guarantees and the rational use of medicines and health products.

Furthermore, to facilitate companies' awareness of the regulations and to prevent any recurrence of fragmented legislation, the State will introduce a **common commencement date system**, such that a restricted number of dates will be established on which domestic laws affecting business and companies will come into force. This system will not include, however, European regulations (whether of immediate application or those involving the transposition of Directives), air navigation and traffic orders, changes in social benefits, or any regulation that has no impact on business activities.

In addition, exceptions may be made to the application of this system, for example, to address emergency situations or measures to eliminate a specific risk or serious prejudice to commercial activities. This project will begin with a pilot phase and the regional governments will be invited to participate.

## 4. ADMINISTRATIVE REGULATION REFORM

### Present situation

The regulations governing public-sector administration have gone through various stages. Traditionally, the rules governing organisational aspects of executive power were distinct from those for procedures. This separation was ended by Act 30/1992, of 26 November, on the legal system applicable to public administration and the common administrative procedure, which combined into a single instrument the Government's powers to regulate these questions, under Article 149.1.18.<sup>a</sup> of the Spanish Constitution.

Subsequent regulatory developments have been characterised by a profusion of laws, royal decrees and other provisions of a lower rank that, whether independently or by amending existing law, have complemented (in a somewhat disjointed way) the basic structure of administrative law. Thus, we now see rules governing organisational issues (Act 6/1997, of April 14, on the organisation and functioning of the General State Administration; Act 50/1997, of 27 November, on government; Act 28/2006, of July 18, on State agencies for the improvement of public services), rules of procedure, rules that, without exactly fitting either of these descriptions, address aspects of one or both approaches (Act 11/2007, of 22 June, on electronic access of citizens to public services), and finally, measures that combine the two types of regulation (Act 30/1992, of 26 November, on the legal system applicable to public administration and the common administrative procedure).

Therefore, it is clearly necessary to provide the public law regime with a systematic, coherent and consistent administrative system, in accordance with the basic goal of enhancing regulatory quality.

### Proposal

To create a clearer, more transparent and rational system of administrative law, **two provisions** will be presented:

- The first, governing **the legal regime applicable to public-sector government**, will also address non-core aspects of national government and will incorporate the provisions ruling institutional management in accordance with the proposals made by the Sub-Commission on Institutional Management.
- The second will **regulate administrative procedures**, setting out the rules that govern the relationship of citizens with government through electronic channels.



## 5. REFORM OF THE GRANTS ACT

### Present situation

In view of the experience acquired during the ten years during which the current Grants and Subsidies Act has been in force, its amendment is now considered necessary. The current system of grants and subsidies presents the following problems:

1. Overlaps between national and regional governments; insufficient clarity in the separation of functions, causing numerous conflicts of competence.
2. Inefficiencies arising from the exclusive funding of oversized projects from public sources.
3. Excessive support, without realistic reference to certain forms of private spending.
4. Local or regional databases overlapping national grants and subsidies.
5. Excessive delays in effecting repayments, particularly when so required following audit proceedings by the General State Administration Comptroller-General.
6. Unresolved issues in the implementation of subsidised activities.

### Proposal

The Act will be amended to address, among others, the following issues:

1. Greater **transparency in the provision of grants and subsidies**, greater competitiveness in project selection, providing finance only to cover the costs that are strictly necessary and requiring a specific minimum contribution from the private sector. This measure is applicable to competitive projects, excluding, in all cases, personal assistance, such as welfare assistance or scholarships.
2. **Limits to public funding of certain types of private spending**. This measure is applicable to competitive projects, excluding, in all cases, personal assistance, such as welfare assistance or scholarships.
3. **The elimination of overlaps between national and regional administrations**. The new legal text must endorse the Constitutional criteria of division of powers with respect to subsidies, as expressed by the Constitutional Court, based fundamentally on its Judgment 13/1992. These principles must be incorporated in order to achieve a clear delineation of functions and to eliminate the many conflicts of competencies that have proliferated in recent years.
4. A better **division of powers** between government agencies and entities operating in the private sector.
5. A better use of the different government databases concerning grants and subsidies, with an **automatic interconnection between local and regional databases and the national one**.
6. The national database system must operate as a **means of publicising the grants and subsidies** awarded, to promote transparency, simplify procedures and avoid the need for fund awarders to announce the fact in the corresponding official gazette.
7. The **interconnection of the national grants and subsidies database with those of the Tax Authority**.
8. **Clarification of the role of collaborating institutions**.
9. **More flexible administrative procedures**, while maintaining necessary rigour:

— **Reformulation of time limits** to account for the proper use of grants and subsidies received, and the necessary presentation of an administrative demand, **if justification is not provided**, as a pre-



requisite to initiating proceedings to obtain repayment. These principles are of general application at all levels of government.

- Greater use of the **principle of proportionality**, with respect to all aspects of grants and subsidies, and not just to calculate the repayment due. This measure is aimed at eliminating the rigidities that had previously arisen from a literal interpretation of the regulations.
- If the beneficiary fails to comply with formal obligations due to **causes attributable to the public administration**, no irreparable prejudice must be caused for this reason.
- A consistent approach will be taken regarding changes to grant award decisions because of incidents during the implementation of the funded activities.
- To promote trade and economic recovery within the private sector, a measure will be included in the General Grants and Subsidies Act to **support compliance with legislation regarding late payment of debt between individuals**, when commercial operations are publicly funded.
- Finally, the procedure for controlling funding awards **will be integrated with the repayment process**. Thus, the General State Administration Comptroller-General will be granted the power to pursue the repayments identified in the controls effected by its supervisory bodies. This reform has the following goals:
  - i. To simplify the procedure and reduce execution times (by over a year), thus saving fund beneficiaries from having to wait so long for administrative action.
  - ii. To reduce the financial load (i.e., interest payments) on beneficiaries.
  - iii. To reduce administrative costs and to advance the receipt of funds.
  - iv. To link control/repayment procedures with sanctions proceedings, promoting greater simplification and legal certainty and providing the model with a flexible, effective tool in the fight against fraud.

## 6. PUBLIC SECTOR COMMERCIAL DEBT CONTROL DRAFT ACT

### Present situation

The adoption of Act 2/2012, of 27 April, on budgetary stability and financial sustainability reinforced the principle of budgetary stability as a structural value within the economy, and incorporated financial sustainability as a guiding principle of economic-financial performance for all levels of government: national, regional, municipal and the Social Security system.

The Act addresses debt control, limiting the volume of public debt. However, public sector borrowing is reflected not only in the volume of financial debt, but also in that of commercial debt. Therefore, **financial sustainability requires the control of both public and commercial debt**.

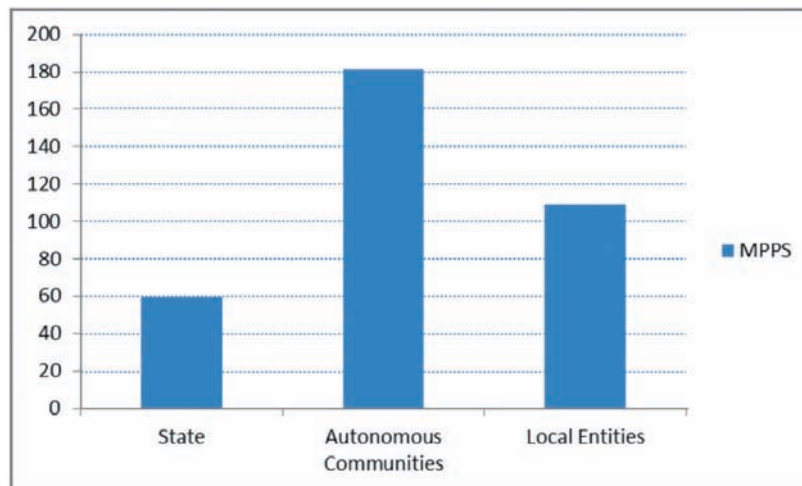
The **situation of persistent late payment by government bodies has led to widespread breaches of the statutory period of 30 days for payment to be made to suppliers, and thus commercial debt has risen**. An increase in the mean payment period to suppliers, and therefore of governments' commercial debt, **threatens their financial sustainability and makes it more difficult to meet medium-term goals of budget and public debt stability**.

At the national level, during the fourth quarter of 2012, the average payment period for current expenditure on goods and services was 60 days and for investments it was 35 days. At 31 December 2012, there were 5,297 payments outstanding, with a total value of 554.3 million euros, to be paid within 30 days. Of these outstanding operations, 736 operations, amounting to 53.2 million euros, had exceeded the statutory payment period. On average, these operations had exceeded the legal maximum period by 131 days. Of these 736 operations, 637 (amounting to 51.3 million euros) had been paid by 4 March 2013, leaving 99 transactions worth 1.9 million euros still outstanding. Many of these operations are in

this situation for reasons such as the lack of bank account data or the occurrence of incidents such as tax liens or offsets against refunds.

Among the regional governments, the average payment period was around 181.4 days.

At the local level, according to the data submitted in municipal adjustment plans (2,169 municipalities, 27% of the total), the average payment period at 31 December 2012 was 109 days.



## Proposal

The situation described above calls for the **regulation of late payment by public sector authorities, and so the following main changes are proposed:**

- The **commercial debt of public authorities will be required to comply with the principle of financial sustainability.**
- The **concept of mean payment period to suppliers (MPPS) will be introduced and authorities will be obliged to publish this information,** at a periodicity to be stipulated in an Order issued by the Ministry of Finance.
- **Failure to meet the stipulated MPPS will trigger sanctions. All authorities will be required to prepare a cash plan, or monetary budget in the case of the State, including information on scheduled payments to suppliers and guaranteeing MPPS compliance.** The rate of spending commitments must be in accordance with the implementation of the cash plan or monetary budget. The Ministry of Finance and Public Administration will issue an Order for all necessary measures be taken to implement the principles of transparency and of the sustainability of commercial debt. The Order will also detail the methodology to be used in calculating the average payment period.
- **Non-compliance with the MPPS will be addressed by an automatic, progressive system of control,** as follows:
  1. **In the first 15 days of the month following the entry into force of the Act, public authorities must publish their MPPS and the corresponding cash plan, with the measures required to reduce payment delays.**
  2. **If in two consecutive months the MPPS exceeds the maximum period stipulated in the regulations by more than 30 days:**
    - Regional governments: The Ministry will communicate the amount to be allocated to the payment of suppliers, and the measures to be adopted in order to reduce the MPPS.

- Local administrations: The audit authority will monitor the progress of the MPPS. For local governments that are included in the tax-assignment model (i.e., the larger municipalities), the auditor will notify the Ministry of the non-compliances detected, so that further control measures can be taken.
3. If the non-compliance persists, and another two months elapse during which the MPPS exceeds the maximum period stipulated, the following **automatic correction measures** will come into effect:
- **Funding resources will be withheld and the Ministry will pay suppliers directly.**
  - **Budget modifications** producing a **net increase in a regional government's non-financial costs**, and that according to current regulations are **not funded from the contingency fund or chargeable to other loans**, will require a non-availability decision, for the same amount, to be taken. **This must be reported to the Ministry**, stating the finance item affected, the spending measure to which it refers and the budget modification giving rise to this situation.
  - **All long-term debt operations must be authorised by the Ministry.**
  - The regional government must include new measures in its **cash plan** in order to meet the stipulated MPPS.
4. With respect to local authorities, if the breach of the MPPS persists, the Ministry may order the automatic application, if the municipality is subject to the tax assignment model, of additional funding mechanisms that are currently in force.
5. Finally, if after another two months the MPPS continues to exceed by more than 30 days the maximum period stipulated, **the enforcement measures set out in Article 25 of the Budgetary Stability and Financial Sustainability Act may come into effect and, in the case of a regional government, the authority will automatically be included in the additional funding mechanisms currently in force, when so decided by the Ministry.**

## 7. PROMOTION OF E-INVOICE AND NEW ACCOUNTS REGISTER DRAFT ACT

### Present situation

The implementation of information and communications technology in the public sector **is a major factor for increasing the productivity** and competitiveness of the Spanish economy. In this respect, the **European Commission** has identified electronic invoicing as a key action within the first pillar (the creation of a single, dynamic digital market ) of its "Digital Agenda for Europe", one of the flagship initiatives of the "Europe 2020" strategy to overcome the financial and economic crisis. In consequence, the Commission has issued several communications, **both general and specific, regarding public procurement.** Moreover, on 20 April 2012, the **European Parliament** adopted the Resolution "on a competitive digital single market – eGovernment as a spearhead" which, among other aspects, called for mandatory electronic invoicing for all procurement processes by 2016.

### Proposal

**A law should be adopted, applicable to all authorities, including national, regional and local governments,** under the powers vested in Article 149.1: basis and coordination of general planning of

economic activity (para. 13), exclusive jurisdiction in general finance and national debt (para. 14) and the legal system applicable to public authorities (para. 18), with the following content:

## A. MEASURES AIMED AT THE SUPPLIER

- a) **Promote** the use of **electronic invoicing in the public sector**, enabling suppliers to make use of instruments such as the electronic seal and the advanced electronic signature. These instruments **will be of mandatory application from 15 January 2015** for certain companies, i.e., those obliged to present electronic tax returns. However, public authorities may exclude from this obligation invoices **for less than 5,000 euros**.
- b) The **use of electronic invoicing in the private sector will also be encouraged**, in accordance with European initiatives in this regard. Accordingly, Act 56/2007, of 28 December, on measures to promote the information society, will be amended to promote the use of electronic invoicing by suppliers of particular economic significance, **for whom it will be compulsory from 15 January 2015**.
- c) The invoices issued by suppliers to any area of government must be presented to an administrative register.
- d) All areas of government will have a **general point of entry for suppliers to submit electronic invoices to be processed electronically**. In other words, there will be a single entry point for the receipt of electronic invoices, for each level of government (the State, each Autonomous Community and municipality), to coordinate all the electronic invoices received by organisations, entities and associated or dependent agencies. However, it will be possible for one level of government to make use of the invoice entry point created by another, rather than developing its own, under the principle of efficiency. In fact, the adhesion of the Autonomous Communities or of local governments to the General State Administration general entry point for electronic invoices will be voluntary, but non-adhesion must be justified in terms of efficiency under Article 7 of Act 2/2012, of 27 April on budgetary stability and financial sustainability.  
The effect of these measures will be to strengthen the position of the supplier and to streamline payment procedures. Thus:

- The validity of invoice records will enhance protection for suppliers, by demonstrating the effective invoice date for the purpose of interest accruals due to payment delays.
- Invoices will not remain unpaid and unrecorded by administrative bodies.
- New technologies will enable invoice processing to be streamlined.
- Their control and monitoring, for subsequent payment, will be facilitated.

- e) **Invoices must have a structured format**, as stipulated by Ministerial Order, and be signed with an electronic signature based on a recognised certificate. This invoice may be valid for tax authority purposes as established in the corresponding regulations.

## B. MEASURES AIMED AT THE PUBLIC AUTHORITIES

- a) **All public authorities will be required to maintain accounting records** of their invoices, managed by the department assigned this function, which will be interrelated or integrated with the accounts information system.
- b) In the invoice-handling system, priority will be given to their transmission to the accounts department and then to the management agency, to ensure adequate control. This requirement will enter

into force on 1 January 2014 to allow time for the administrative software to be adapted accordingly.

Thus, the accounts department will obtain immediate information of the organisation's real financial situation, with less delay and greater efficiency. Currently, invoices are submitted to the management agency without the accounts department being previously informed; this body is only made aware of the invoice after the management agency has already carried out the payment procedure. As a result of this change:

- Confidence in public accounts will be enhanced and controls improved, thus contributing to compliance with budgetary stability and financial sustainability targets.
  - Mean payment periods to suppliers can be monitored and late payment by public authorities controlled.
- c) Greater powers will be assigned to accounts departments, which may periodically call for action to be taken regarding invoices pending the recognition of obligation, about which they must be informed in advance (this is not currently the case). Furthermore, a quarterly report will be prepared on the invoices entered into accounts records more than three months previously and which have not yet received the recognition of obligation by the competent bodies.
  - d) **Internal audit and control bodies will be reinforced** and facilitated access to supporting documentation, to the records of invoices received and to the general accounts at any time, and will present an annual report on compliance with the legislation on late payment. For local authorities, this report will be presented to the plenary.
  - e) The **accounts records** of invoices processed by audit and control bodies **will be sent to the Tax Authority** in order to ensure the fulfilment of tax and billing obligations.
  - f) **Information will be exchanged** between the Tax Authority, regional and municipal tax collection offices, the Social Security General Treasury and government payment offices regarding debtors, creditors and payments made, in order to perform the corresponding embargo/compensation proceedings. The Tax Authority will create and manage the computing platform to develop this information exchange and to manage payment collection procedures.

## 8. RESTRUCTURING OF THE PUBLIC BUSINESS AND FOUNDATIONS SECTOR

### Present situation

As noted in the Introduction, in March 2012 the Government approved a plan to restructure and rationalise public companies and foundations, and this plan is now fully operational.

Apart from the goal of reducing costs in public sector companies and foundations, in various respects (limiting directors' salaries, reducing the operating costs of governing boards, cutting costs related to allowances, expenses, travel, services, etc.), which has already been addressed in this report, the plan was intended to make public sector companies and foundations more rational and better sized, avoiding duplications and overlaps, by incorporating subsidiaries into the parent company, merging companies or foundations sharing similar goals, accelerating liquidation processes already in progress and disinvesting from companies in which State participation is unnecessary.

The restructuring of the public sector is a slow and complex process, mainly because it is subject to administrative and commercial law (from the latter perspective, in many cases certain phases must be fulfilled both by the Board of Directors and by the General Meeting of Shareholders, and the outcome must then be entered in the Mercantile Register), and requires continuous monitoring to ensure proper implementa-



tion. Recognizing this situation, the Plan stipulates that the Government Commission for Economic Affairs, when so requested by the Ministry of Finance and Public Administration, should present to the Council of Ministers a progress report on the implementation of this Plan in the first quarter of 2013. According to this report, the operations relating to public sector foundations are fully completed.

With respect to the 22 operations involving mergers, the sale of assets or the liquidation or change of ownership of public companies, 14 are fully executed or are expected to be completed by September this year. Two operations have been delayed, but remain fully operational. Meanwhile, six have been re-focused, which does not mean that appropriate restructuring will not take place, but that during the implementation process an alternative approach was found to be preferable.

In regard to the liquidation of companies and foundations, some are affected by complex judicial or town planning problems, but in any case, seven operations will be completed during 2013.

Finally, the Plan approved by the Council of Ministers did not establish a timetable for disinvestment from State-owned companies, as this operation depends to a large extent on external factors (market conditions, agreements with other shareholders, etc.). Therefore, the various ministries are continuing their analysis of the feasibility and specific characteristics of each disinvestment process, so that it can be implemented without delay when the situation permits.

## Proposal

**The Commission for Public Administration Reform (CORA) fully endorses the approach taken to public sector restructuring.** However, in full awareness of the difficulties and delays that may be encountered in this task, certain additional operations must be addressed without delay<sup>1</sup>:

- **The elimination of the public company Gerencia del Sector de la Construcción Naval, incorporating its resources within the ministerial organisation; the liquidation of five companies:** Sociedad de Estiba y Desestiba de La Gomera, Sociedad de Estiba y Desestiba de El Hierro Sociedad Mercantil, Sociedad LTF (which on the contrary to the measures stipulated in the Decision taken on 16 March 2012, will be liquidated), PROERSA and La Almoraima S.A.
- **The elimination of ten foundations, incorporating their resources within the ministerial organisation, other public bodies or other foundations:** FOMAR, AENA, Fundación Ferrocarriles Españoles (to be incorporated within the Transport Foundation), CECO (incorporated into ICEX), CENATIC (incorporated into the public entity Red.es), Fundación Española para la Innovación de la Artesanía (incorporated into EOI), FUNDESFOR (to be liquidated), CIUDEN (partially incorporated into IDEA, except museum activities), Taller Juan José Foundation (liquidated), Universidad.es (incorporated into the Autonomous Agency for European Educational Programmes), OESA (incorporated into the Biodiversity Foundation or within the ministerial organisation), and the ENRESA Foundation (incorporated into ENRESA).

CORA also proposes that in March 2014, coinciding with the second anniversary of the plan to restructure and rationalise public companies and foundations, **an evaluation should be made of the progress achieved and, in accordance with the basic ideas presented by the Sub-Commission on Institutional Administration, a further decision by the Council of Ministers may be considered.**

**The Autonomous Communities, in accordance with the adjustment plans presented, should continue their own process of restructuring,** as set out in Decisions 1/2010 and 5/2012 by the Council for Fiscal

<sup>1</sup> The section of the Sub-Commission's Report on Institutional Management presents in detail the formal reasons for its proposals and additional information on these and other operations, which are listed here only for reference.

and Financial Policy. As indicated above, the initial commitment was to eliminate 515 organisations, a figure that was later increased to 708, reflecting 86 newly-created organisations and 794 to be liquidated<sup>2</sup>. This reduction will mean that the number of entities to be eliminated will rise from 21.8% of the instrumental public sector (at 1 July 2010) to 30.0%. Thus, this sector will finally be reduced to 1,654 organisations.

There are notable differences among the Autonomous Communities regarding the size and composition of the instrumental public sector. Thus, after the above restructuring processes have concluded, Catalonia will have 378 entities (22% of the total), Andalusia 246 (15%), Madrid 155 (9%) and Aragon 102 (6%), while the remaining Autonomous Communities will have fewer than 100 entities each. Accordingly, and despite the effort made, the regions with the largest number of these organisations still have scope for further restructuring.

Apart from the public sector restructuring plans that must be approved by the General State Administration, the Autonomous Communities and the municipalities, CORA considers it necessary for there to be an on-going strategy and a specific policy regarding the activities of public sector institutions. At present, it is relatively simple to create a public institution, but its liquidation, as discussed above, remains excessively complex. Therefore, the Commission believes mechanisms should be introduced to prevent the unnecessary creation of future entities, to require the continuous review of the functions, goals and structures of existing bodies, and to facilitate their subsequent restructuring.

To achieve this, CORA proposes the creation of a supervision and evaluation body, to ensure the coherence of the system and to evaluate each and every one of the organisations within the General State Administration. Furthermore, to enforce compliance with Article 11 of Act 30/1992, of 26 November, on the legal system applicable to public administration and the common administrative procedure, i.e., to prevent the creation of new bodies when their powers would overlap with those of other bodies unless at the same time the competences of the latter are eliminated or restricted, the data contained in the Autonomous Community Inventory of Dependent Organisations must be integrated into INVESPE, its national equivalent. Thus, before any public administration creates a new entity it must ensure that no overlap would be caused thereby. This policy, together with the legal amendments planned by the Sub-Commission for Institutional Management, described in the corresponding section, means that in the future all public administrations will have to verify compliance with the requirements of necessity, effectiveness, efficiency and absence of duplication before creating any new instrumental organisations.

## 9. CREATION OF THE INFORMATION HUB

### Present situation

The General State Administration contains widely-dispersed sources of public information on budgetary, financial and economic issues, which apply different criteria on access to information and how it is offered. This situation impedes effective use of the information, which may be difficult to locate or manage or not even available. According to Article 28 of Act 2/2012, of 27 April, on budgetary stability and financial sustainability, the Ministry of Finance and Public Administration is obliged to maintain an information centre, of a public nature, to provide information on the economic and financial activities of government and public administration.

Order HAP/2105/2012 of 1 October, which details the information provision obligations established by Act 2/2012, of 27 April, on budgetary stability and financial sustainability, specifies the obligations

<sup>2</sup> The information concerning the reorganisation of the regional public sector is mainly based on the Autonomous Communities' Inventory of Dependent Entities and on legislative sources, decisions and plans submitted by them.



regarding the periodic and non-periodic provision of information by regional and local administrations, and designates the Ministry of Finance and Public Administration as being responsible for detailing the models and formats in which information should be supplied and published on the corresponding website.

## Proposal

To comply with the provisions of the Budgetary Stability and Financial Sustainability Act and its implementing regulations, the Ministry of Finance and Public Administration **should create a centralised public information agency to provide information on the economic and financial activities of all areas of government**. This information centre will be hosted at the Ministry website ([www.minhap.gob.es](http://www.minhap.gob.es)) and its input will be constituted of the data supplied by data control managers. For this purpose, standard criteria will be established for the publication of information, and a system of governance established for the continuous updating and full maintenance of the information content held.

This information centre **will reduce data search times, improve the quantity and quality of the economic, budgetary, financial and statistical information provided, increase its interoperability and potential for reutilisation, and avoid the duplication of publications**. These advances will enhance **transparency and confidence in the financial and economic information** provided by government administrations.

## 10. STRATEGIC MEASURES FOR PUBLIC EMPLOYMENT

Any governmental structural reform must be accompanied by the formulation of a strategy for innovation and efficiency in the configuration and management of public-sector employment —an evident requirement when government's main asset is its human capital. In transforming the public sector, we seek to adapt its form of operation to the needs of citizens and businesses, and to make different levels and areas of government capable of providing effective responses to people's concerns. However, such ambitious goals are not achieved by simply amending legislation and rationalising competencies; **it is essential to ensure that public workers become key players in the reform**.

Public employees do commendable work, which is often not sufficiently acknowledged and valued. For this reason, new impetus must be given to the human resources policy in the public sector, based on merit, professionalism and accountability, to make it flexible and responsive to the needs of public service.

This new strategy for managing public employment will be based on the development of new policy instruments; in this respect, the General State Administration will be equipped with a Basic Statute for Public-Sector Workers, in which key issues such as the design of a new career model within the civil service and the generalised application of a performance evaluation system will be addressed. The implementation of new personnel management tools by government organisations in general and by the General State Administration in particular is another central element of this reform. Accordingly, the following strategic actions, involving legislative and/or management reforms, should be carried out:

### A. *ESTABLISHING GUIDELINES TO DETERMINE THE LEGAL SYSTEM APPLICABLE TO PERSONNEL INVOLVED IN THE DELIVERY OF PUBLIC SERVICES*

Taking into account the necessary differentiation among legislative instruments applicable, depending on the nature of the actions to be taken, and on the nature of public sector staff employment contracts (career or contract staff), a review will be made of the areas in which there is a mismatch between the use of one or other type of personnel and the competencies involved. Another fundamental aspect is the need to identify outsourced functions that could be internalised, by allocating surplus personnel from other areas, with consequent savings. In addition, stringent criteria should

be applied to determine which functions can profitably be outsourced. The basic aim of this procedure is to optimise the use made of the human resources available.

## *B. REDEFINING THE ELEMENTS UNDERLYING THE CLASSIFICATION OF PUBLIC-SECTOR EMPLOYMENT*

Under the Civil Service Basic Statute (CSBS), public employment is structured with respect to two fundamental elements: the job position and the units and levels of civil service personnel. Taking this fact into account, a catalogue will be created of the civil service units that play a crucial role and exercise specific competences, in accordance with the content of the current job position listing. For the remaining cases, once the present excessive number and variety of units has been reduced and simplified, and when budget resources permit, steps will be taken to put into practice the horizontal and vertical career paths and the horizontal and vertical routes of internal promotion provided for in the EBEP.

The administrative career path will be associated with the establishment of stages or steps and with the definition of training itineraries, thereby contributing to a greater professionalisation of the civil service, in which the trajectories of its employees are linked not only to legitimate individual expectations but also, and fundamentally, to organisational necessities and to the provision of public service, which is the fundamental reason for the organisation's existence.

With respect to contract staff, their specific regulations, as well as the right to promotion referred to in the EBEP, offer new classification instruments of professional categories that must be used to ensure these workers are professionally oriented in the manner most appropriate to current needs, thus contributing to the functional versatility referred to in the recent Labour Market Reform.

## *C. RECONSIDERATION OF INTERIM PERSONNEL*

Responsible management of public resources requires appropriate use be made of interim personnel, hired to provide specialist advice and perform duties in positions of trust within senior levels of the General State Administration (reporting to Ministers and Secretaries of State). Therefore, regulatory changes are needed to reconcile the discretionary nature characteristic of such appointments with the fulfilment of certain requirements relating to the experience and professional qualifications of those involved. These two questions are not contradictory; the aim of their joint consideration is to enhance the professional skills applied and the outcome of the tasks assigned. In addition, the necessary legislation will be implemented to ensure that the provision of interim personnel is homogeneous throughout the different administrative departments and units.

## *D. REDEFINITION OF JOB POSITIONS*

Measures will be taken to provide more efficient management of job positions, greater efficiency in administrative actions and greater flexibility to adapt government to particular situations, facilitating mobility from areas with a surplus of personnel to others where they are lacking. This redefinition will be based on the fundamental instrument available, the classification of job positions, in accordance with which the ultimate decisions regarding the internal allocation of job positions are taken by the head of each Management Centre or, as appropriate, Sub-Secretariat. There could also be a list of job positions available to provide services throughout the General State Administration, to meet short-term needs that may arise within its departments. The aim of this reform is to achieve a more flexible structure than the permanent assignment of a given job position to a particular administrative unit, and thus overcome present rigidities. This measure will affect the

units comprising Groups A1 and A2, and those in Groups C1 and C2 that are not assigned any specific competences, functions or job positions.

## *E. STRONGER LINKS BETWEEN HUMAN RESOURCE PLANNING AND GENERAL STATE ADMINISTRATION STRATEGIES AND PUBLIC POLICIES, TOGETHER WITH THE DESIGN OF INSTRUMENTS FOR MEASURING WORKLOADS, TO FACILITATE THE EFFICIENT ALLOCATION OF HUMAN RESOURCES*

It is necessary to enhance and strengthen the relation between identifying staffing needs, on the one hand, and the organisation's strategic objectives, on the other, as well as addressing short and long term challenges. Thus further analysis must be made of the demands to be met, the staff required to do so and their level of professional qualifications.

The implementation of workload measurement systems, as described in Proposal 0.00.001 "The introduction of a system to assess productivity/efficiency", based on common external parameters for units of a homogeneous, and therefore comparable, nature, and periodically updated, is a powerful tool for overall and sectoral planning and for effective decision making on staff mobility, enabling a more efficient allocation of human resources, in terms of both newly-recruited staff and those already employed within the General State Administration. New employment within the public sector should be reoriented toward a system that is compatible with the Budget Law and with the Budgetary Stability and Financial Sustainability Act .

## *F. INTERNAL AND INTER-ADMINISTRATIVE MOBILITY*

Subject to regulatory changes that may be necessary, following the implementation of new models of civil service career progression, the context to be aimed for is that of a public sector that is both lighter and more flexible. The pattern should be one of personnel that are fewer in number but more highly qualified to carry out their tasks, which, in addition, will be qualitatively more complex. Accordingly, there must be an outlook on staff mobility that seeks to achieve the most efficient possible use of the resources available to each administration, and which takes into account two elements, in particular: on the one hand, the need to channel staff toward areas where they are particularly needed, from those where they may be considered surplus to requirements; and, on the other, the need to ensure staff are appropriately qualified.

Furthermore, the concept of staff mobility should be applied within all levels and areas of government. Each has its own capacity for self-organisation, and must apply its own processes of staff rationalisation, albeit from widely varying start positions. We believe the most appropriate instrument to channel this staff mobility is that of coordination among the different administrations, via the Public Employment Coordination Commission. Thus, protocols should be established to enable cooperation and the sharing of resources among professional sectors, areas or locations where the need for them exists, such that public employees who are suitably qualified to exercise certain functions may do so in different sectors of government.

## *G. IMPROVING INFORMATION SYSTEMS*

In acting to reform public-sector employment, decisions must be taken on the basis of available information on public-sector employees. Whilst preserving the functioning of personnel records, to ensure the security and reliability of this information, the information system should also include other elements, which often have no place in the context of registry items, such as university degrees, master's degrees, accredited fluency in foreign languages or work experience in the EU or in international organisations. In addition, advantage should be taken of the fact that personnel

procedures are largely processed through electronic channels, to achieve a greater interconnection of computer systems and applications. Therefore, new models of databases should be generated for personnel management, going beyond the minimum legal requirements and adding value to the organisation.

## H. PERFORMANCE ASSESSMENT

Performance assessment is, without doubt, one of the main pillars of the reform of the General State Administration, because it constitutes the basis of a system to connect and provide coherence to three core elements: Training-Career Advancement-Remuneration. But more than a personnel management system, it is an instrument that is very strongly related to the philosophy of management by objectives. Although in some areas, management by objectives and performance assessment are commonly applied (this is the case, for example, in the Tax Authority, the Social Security system, the Comptroller General, the territorial offices of the Ministry of Economy and Finance, and the State Legal Service), this is not so elsewhere within the General State Administration.

This process should be carried out by the Inspection Services of Ministerial Departments and/or by other General State Administration bodies, on the basis of common criteria, such as those set forth in Proposal 0.00.001 "The introduction of a system to assess productivity/efficiency", whilst allowing a certain degree of flexibility and autonomy in the application by each unit. The process of implementing performance assessment in public-sector employment will require sustained effort. The distribution of productivity credits will depend on the results of the performance assessment, but in no case will the latter produce an increase in the overall productivity credits assigned to each department or agency by the Secretary of State for Budgets and Expenditure, within the Ministry of Finance and Public Administration. Both its implementation and its effects must be addressed progressively.

## I. PROFESSIONAL TRAINING AS A SIGNIFICANT FACTOR IN GENERAL STATE ADMINISTRATION CHANGE AND REFORM

As part of the process of cultural change within government administrations, a different attitude must be taken toward the question of professional training. On the one hand, there must be more effective coordination between the training plans of the different levels of administration, which in itself will enhance the content of the training provided; furthermore, the General State Administration must make generally available its resources, centralising the management of cross-cutting training courses, and breaking down the barriers imposed by a framework restricted to each ministry or organisation, opening up courses to staff from other areas (see, in this respect, the measures described in the sections on Sub-Commissions examining overlaps and institutional management). Secondly, a thorough review is needed of existing training plans, to avoid the mere continuation of previous actions and routine approaches, linking projects for improvement to strategic planning focused on each area, and suiting this to individuals' abilities and skills, to achieve real progress toward competence-oriented management systems.

Finally, advantage should be taken of current technological possibilities, which have produced a radical change in the organisation and distribution of training activities, far exceeding traditional formats.

## 11. PUBLIC ADMINISTRATION REFORM IMPLEMENTATION OFFICE

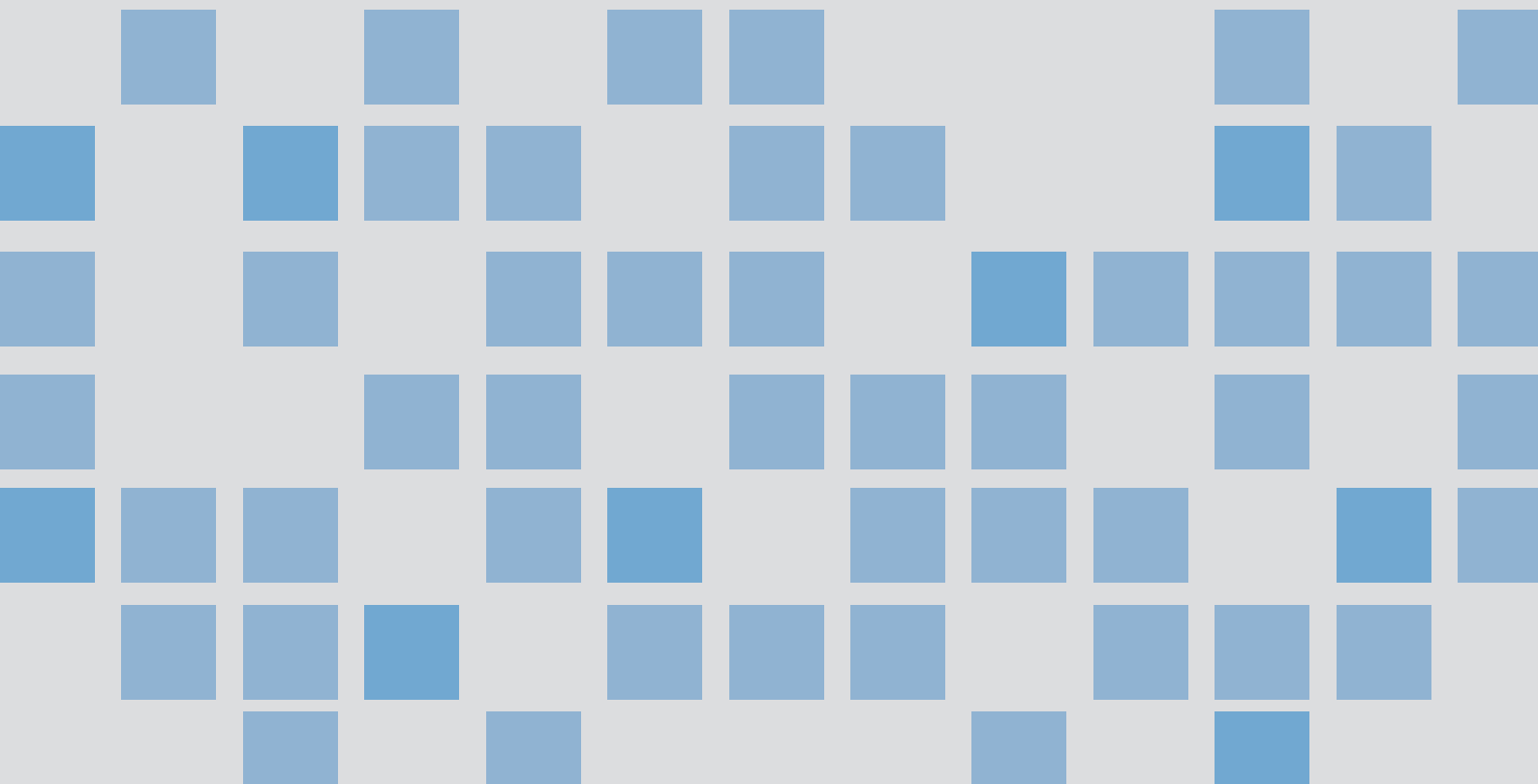
As made clear in this extensive report, government reform is a complex process, involving many layers and compartments of the civil service and requiring sustained effort over time. In order to ensure the full implementation of the project and to evidence the political resolve to do so, it is essential to create an **Office for the implementation of this reform project**. Such an Office must present these main features:

- **Organisational location and rank commensurate with its mission to promote the implementation of government-wide reform.**
- **Exclusive dedication to this goal.**
- **Sufficient resources to carry out the task**, more in a qualitative than in a quantitative sense, appropriate to the implementation of the different proposals within the administrative units affected.



# IV

## Sub-commission on Administrative overlap







## IV. SUB-COMMISSION ON ADMINISTRATIVE OVERLAP

### 1. INTRODUCTION. OVERVIEW OF THE PRESENT SITUATION

#### A. THE STATE COMPOSED OF REGIONS (AUTONOMIC STATE) AND ITS CONFIGURATION

The configuration of the Autonomic State is based on what has been termed by legal scholars as the **dispositive principle**: the Provinces themselves were responsible for stipulating the composition of the Regional Governments (Autonomous Communities). It was also incumbent on them to stipulate in their Statutes the powers they would assume and their organizational structure within the Constitutional framework; neither of these would be imposed on them by the Spanish Constitution.

It is thus that under the so-called dispositive principle, the Regions could opt for one level or another of powers, depending on what they adopted in their Statutes. Their only limitation was to respect those powers reserved exclusively to the State as laid down in Section 149.1 of the Spanish Constitution. **The dispositive principle takes on such potency that even within the solid nucleus of State powers laid down in Section 149.1, it is possible for Regions to exercise authorities through the mechanisms envisaged in Section 150 (framework laws, Organic Acts dealing with devolution or acts of delegation and harmonisation), placing these powers practically on the same level.**

Regarding the distribution of powers between the State and the Regional Governments, a first glance at **Part VIII might lead to the understanding that the Constitution distributes the powers between the State and Regions under a system of a parallel horizontal list** —Section 148 enumerates the areas in which Regional Governments can assume powers and Section 149.1 establishes those which are exclusively of the State. **This is not, however, the case.**

Section 148 was conceived simply as a temporary limitation for the Regions that did not arrive at “autonomous” status through Section 151. Thus, Section 148.2 provides that even “after five years, these Regions may, by amendment of their Statutes of Autonomy, progressively enlarge their powers within the framework laid down in Section 149”. This is, thus, what occurred in what is called the Second Autonomic Process that brought those Regions of slower composition to the same level of powers as those who achieved autonomy status through Section 151: “It shall not be necessary to wait for the five-year period referred to in Section 148, Subsection 2, to elapse”. (Section 151).

Effectively, after the transitional five-year period, the Constitutional precept relevant for analysing the Constitutional system of distribution of jurisdictions was Section 149. At present, the Constitutional Court only recognises Section 148 as being “hermeneutical” in nature (STC 247/2007). Therefore, what holds as true is that the Constitution utilises a model of one sole list of minimum State powers defined in Section 149. In this Section, a distinction must be made between two scopes of competence:

- The scope of Section 149.1 of the Spanish Constitution, establishing a minimum core of State jurisdictions attributed exclusively to the State. In this scope, the Regions cannot take on any jurisdiction whatsoever (Section 149.1), except in the case of the State conferring power upon them through the measures provided in Sub-sections One and Two of Section 150.
- The scope envisaged by Section 149.3 where it provides that “areas not expressly conferred upon the State can appertain to the Regional Governments by virtue of their respective Statutes”.

The Regional Statutes should contain the powers the Regions assume within the framework established in the Constitution, given that these are “the rules established for setting the jurisdictions that Regional Governments have within the framework established in the Constitution, thus describing the system of powers

through the Constitution and the Statutes in which the Statutes occupy a hierarchical position subordinate to the Constitution.” (STC 247/2007).

In this second scope of “possible assumption of jurisdictions by the Regions through the Statutes” the State preserves the powers that have not been conferred upon the Regions by virtue of their Statutes. This means that those matters not included in Section 149.1 and not taken on under the Statutes of Autonomy will appertain to the State under this “catch all” provision. “In this way, the conferral of jurisdictions to the self-governing region produces the mirror effect of delimiting the jurisdictions of the State in the regional territory in question.” (STC 247/2007).

Lastly, two final clauses are established in Section 149.3:

- The predominance clause by virtue of which the State laws “shall prevail, in case of conflict, over those of the Self-governing Region regarding all matters in which exclusive jurisdiction has not been conferred upon the latter. This has scarce practical application in Constitutional Court doctrine.
- The clause on suppletory value, according to which, State law “will, in any case be suppletory to that of the Self-governing Regions”. The Constitutional Court has stated that this clause is not an independent conferral of jurisdictions and therefore does not allow the State to amend the State right governing suppletory value in a matter where it does not have jurisdiction. (STC 61/1997).

Doctrine has classified the Regional Governments’ jurisdictions according to the power they have to act on a given matter, in this way distinguishing between exclusive, shared and executive powers. Section 149.1 CE (Spanish Constitution) confers exclusive powers to the State on a list of matters (“following matters”), where two aspects should be highlighted. On the one hand, that the exclusive jurisdiction of the State refers to “matters” whose content is merely listed but not described or delimited, for example “international relations”, “defence and the Armed Forces” and “administration of justice”. On the other hand, exclusive State jurisdiction refers at times to all the matters listed in the general terms described, but in other cases it only includes the “function” of this matter, the scope it covers or the “legislation” and thus neither determines the content nor scope of these functions (STC 247/2007) or the “basic legislation” or “bases” or “basic laws”. The Constitutional Court has progressively delimited the content of each of these matters and the scope of the powers conferred.

Three methods of conferral of jurisdictions are defined in Section 149.1, depending on the functions that the Constitution confers upon the State in an area:

- **Exclusive (in the strict sense) or Full Powers**, in which the State assumes the entirety of functions on a matter, that is, legislative, regulatory implementation and executive powers.
- **Legislative powers**, in which the State keeps the legislative power and the executive power is conferred upon the Regions. The Constitutional Court has defined the meaning of the words “legislation” (State) and “execution” (Regional): legislative must be understood in the material sense and not only comprises the formal Law but also the executive regulations and in some cases (STC 249/1988), even the circulars have ad extra regulatory nature. Alternatively, the regional powers of execution are generally of application and are aimed at enforcing what is established in the regulatory provisions. This power of enforcement includes the power to decree “internal rules for organising the corresponding services as long as these are necessary for the basic internal structuring of the administrative apparatus” (STC 51/2006 of 16 February).
- **Shared jurisdictions**, in which it is incumbent on the State to lay down the “bases”, “basic rules” or “basic legislation” and on the Regions to implement them. The executive powers on the matters are conferred to the Regions.

- Lastly, we will mention what are termed **concurrent jurisdictions**. These are cases in which the State and Regional powers attempt to act on the same matter or upon the same subject by virtue of different jurisdictional areas. The Constitutional Court resolves these conflicts by referring to the predominant jurisdictional rule, always encouraging the agents of these jurisdictions to establish coordination and cooperation methods to avoid the total shift of a jurisdictional matter.

The Constitutional system of distribution of powers can open the door to duplications not only because of the aforementioned concurrent jurisdictions, but due to other reasons such as the cross-cutting of different jurisdictional areas, i.e., regional development and promotion of foreign trade; the concurrence of administrative activities in one same geographical space that are based in different regulatory domains, i.e., agriculture and cross-regional water basins; or due to a frequently confusing and debatable line between basic and applied legislation and the infrastructural activity in which all administrations are involved.

Nevertheless, these drawbacks can be overcome in an inter-administrative collaboration framework, wherever, by the principle of **“one administration, one power”**, adequate mechanisms are employed to **inform and foster cooperation** to avoid duplication of functions in those matters where various administrations operate.

## B. PROS AND CONS OF DECENTRALISED STATES

Decentralised and federal States such as Switzerland, Canada, Australia, Germany, United States and South Africa have periodically conducted studies and proposals on reform measures in order to improve their models of territorial organisation of power for better efficiency. These studies and proposals have been influenced by the **challenges and complications facing the different States composed of units**: the need to compete in a global economy; the importance of defending the single market; difficulty financing the growing range of services and the need to comply with budgetary consolidation commitments.

In most States with a decentralised model of organisation of power, it is assumed that the system has more **pros** than cons and even, that this is the only viable State model. It has been said that a multi-level governmental system **is better equipped to accommodate diverse identities and generally contributes to strengthening democracy**. Moreover, the idea of decentralisation has been associated with **effectiveness, efficiency and quality** of public life.

From a technical and administrative standpoint, **governments closer to citizens** are thought to be better equipped to recognise and solve problems according to the particular circumstances of their territory; have heightened ability to experiment and innovate in policy-making; and are more receptive and flexible towards the preferences of their citizens. Moreover, decentralisation favours the **balance of power**, protecting citizens from the possible abuses of centralised government and fostering **dialogue and bargaining** among actors to reach agreements on certain policies affecting the State, bringing about policies with broader based legitimacy. From an economic standpoint, decentralisation has been equated to **better bottom lines and a more efficient use of resources**.

The downside of decentralisation is usually seen in the form of **poor or inadequate functioning**, understood as those practices or modus operandi of the system that have a negative impact on the effectiveness of public policy (blurring of jurisdictions, dysfunctional coordination, overlapping functions, excess of regulations, no traditions of cooperating, to mention a few).

The Report on Effectiveness of Public Action in the Autonomic State: Diagnosis and Improvement Proposals, prepared by AEVAL (Evaluation and Quality Agency), 14 March 2011, identifies some of the innate shortcomings of the Autonomic State.

**Regarding the decision-making process and the design, execution and evaluation of public policies**, we can highlight the lack of shared or integral planning processes which on occasion hinder the enforcement of coherent policies; undermine the complementarity of different policies; obstruct or complicate the

fulfilment of the objectives defined in European Directives or cause inefficient use of public resources. These issues can sometimes lead to situations of over-financing or lack of funding.

**Regarding cooperation**, the inefficiencies do not stem from the lack or scarcity of cooperation instruments (there are several cooperation bodies on the political level), but rather, from the way they are used and operated. An example is the absence of participatory, common or cooperative procedures that function more on an administrative than political level.

**Regarding the principles of accountability and transparency**, one of the issues that stands out the most is the lack of information systems enabling citizens to be aware of and compare the effectiveness and efficiency of the different policies and public services.

**Regarding policy financing**, the financial deficits stemming from some of the policies or services come about due to lack of information or methodology applied which encumbers cost analysis. Nor is there a sufficiently generalised idea of what amortization of public investment is and in general, cost assumption. Sometimes decisions that are made at one level involve a budgetary impact on another level without a sufficient parallel rise in funding that would cover the additional cost of implementing the rule or decision made. Lastly, we have seen that in some cases economies of scale were not applied in the procurement of goods or services in the case of certain devolved services.

**Regarding the administrative action aimed at citizens and businesses**, we have observed problems arising from the lack of or insufficient development of shared information systems to manage public policy, complications for inter-operability of the different applications designed by the Regional Governments or lack of data update or deficient data entry.

The concurrence of various levels of administration in itself is not dysfunctional, although sometimes it creates duplication (when different administrations provide identical services to the same public); excess of regulations, too many services to choose from, too many inspections or even the absence of acting and lack of coordination in handling compound procedures —those involving the participation of different administrations. Other inadequacies stem from the existence of services that are offered under better or more advantageous conditions in neighbouring regions or cases where there is a jurisdictional void and no administration claims to be competent on that certain matter.

The maturity reached by the Autonomic State and the present context of economic downturn have driven the Government —through CORA— to undertake to **closely examine the possible duplications, overlap and inefficiencies existing in the public administrations. The analysis and proposal of eliminating overlap does not end with this phase, since, as we have stated in the General Measures, a unit will be formed to guarantee the effectiveness of the proposals adopted. The Sub-Commission on Administrative Overlap is poised to create the necessary follow-up instruments for this.**

## 2. WORKING METHOD

The aim of the Sub-Commission has been to analyse the **overlapping existing between the General State Administration and the Regional Governments**, as well as that produced within the State administration itself. Here it is understood that overlapping exists when different administrations provide identical services to identical recipients. These can opt for one or another public administration (**duplicated acts**). It also exists when there are like entities or bodies with like missions, acting on the same subjects (**duplicated bodies**).

In order for the Sub-commission work to begin, the Ministries were requested information on the following matters within their competence: **functions carried out by the Regional Governments**, indicating the jurisdictional area and the presence of activities that are not covered by one specific conferral of power but fall under the Ministry's own scope of operation; **the bodies or entities within the Regional Governments** responsible for their implementation; **the optional or compulsory nature** of the Regional Governments' activities; and **proposals**, where applicable, for organisational modifications and implementation of mech-

anisms to facilitate cooperation and coordination among both administrations with the aim of eliminating overlapping. This information was topped off with that contributed by the State Government Representation based in the Regional Governments.

In parallel, analysis was made of diverse State and regional reports which were the most relevant fore-runners. Of these we can highlight:

- Report on Efficiency of Public Action in the Autonomic State: Diagnosis and Improvement Proposals, by AEVAL (Evaluation and Quality Agency), 14 October 2011.
- Report on Duplications in the State and Regional Administrations, produced by INAP (National Institute of Public Administration), December 2012.
- Report on Administrative Duplication Detected from the Practical Experience in Devolution of Functions and Services to the Regional Governments, produced by the Directorate-General for Competence Coordination with the Regional Governments and Local Entities, 11 December 2012.
- Report on Duplications and Costs of the Regional Configuration, produced by the Institute of Fiscal Studies January 2013.

The analysis of all documentation delivered by the Ministries began during the first quarter of 2013. This was compared to the aforementioned reports. A report was issued for each Ministerial department with the following content:

- Summary of Ministerial report
- Summary of the proposals formulated in other reports (AEVAL, IEF, Government Representation)
- Organisational structures of the Ministry and corresponding Councils
- Proposals and observations

The 1336 comments received in the citizen suggestions box regarding different Ministries were analysed, as were the contributions made by the Advisory Board on the matter.

Having analysed this first round, the Under-Secretary of the Cabinet Office and the Chairman of CORA convened single-focus bilateral meetings with each Ministry in order to expound on the information gathered and determine actions. A set of proposals was identified in each meeting, and are those contained in this report.

### 3. PROPOSALS OF GENERAL OR HORIZONTAL NATURE

#### A. GUIDE TO DETECTING AND AVOIDING DUPLICATIONS

##### Present situation

The Sub-Commission confirmed that many of the duplications and malfunctioning subject to analysis are common to practically all of the Ministerial Departments.

##### Proposal

**A manual will be produced to identify the main types of inter-administrative inefficiencies and duplications.** This manual will be used annually by the Ministries to conduct a review of their own jurisdictions in order to identify duplications that have been overlooked, bodies that have the duplicate tasks and to



prevent new problems from cropping up. **Mechanisms to avoid overlapping** will also be arranged, some of them are outlined here:

**a) Joint decision-making: planning**

Joint decision-making between the State and the Regional Governments is imperative. This is where malfunctioning arises as a consequence of the lack of integrated planning —especially important when implementing Community policy. For this reason, it is paramount to strengthen joint decision-making and adopt a comprehensive focus for public policy on all levels.

**b) Fortification of cooperation bodies**

Inadequacies stemming from cooperation between different administrative levels are frequently caused, not so much because of the lack of instruments fostering cooperation but because of the improper or limited use of them. Actors do not meet periodically, they lack the powers needed to make decisions, they lack oversight instruments to see to compliance with measures adopted or they are more concerned with bilateral rather than multilateral relations. Furthermore, there are new fields where no instrument of cooperative nature has yet been created; it is thus fundamental to foster the functioning of cooperation bodies between the State and Regional Governments to target these duplications.

**c) Greater transparency in public policy funding**

We have detected a lack of integrated communication channels allowing for the flow of economic information between administrations; this reveals the lack of knowledge about the costs of different public policies. Economies of scale, which could be maximised with joint inter-administrative cooperation, are hindered in this way. Greater transparency in this type of financing is a foundation crucial to avoiding overlap and capitalise on resources.

**d) Establishment or improvement of shared information systems**

There are also malfunctions in the inter-operability of the different databases designed and implemented by the Regional Governments and those pertaining to the State, both in exchange of information and in data entry and update. This means under-used and scattered databases strewn about the different administrations. In order to avoid the duplications between the State and Regional Governments, it is imperative that the databases be combined and the information systems shared.

**B. JOINT PLANNING**

**Present situation**

The distribution of powers formerly described means that there are many domains shared by different administrations. It is in these matters where the implementation of common policies designed in a collaborative framework by all the competent administrations is a key factor to providing a comprehensive and unified service to citizens, maximising the experience of all administrations, working with synergies and reaching shared goals. The distribution of powers is not an obstacle to a proper design strategy for different policies. Quite the contrary, the participation at different administrative levels sharpens information and brings in different vantage points resulting in better quality policies which, acting on a set of shared strategic goals, can address the specific needs of different territories. The Conference of Presidents is a choice example of this collaborative framework and can be strengthened even further.



At present, there is an instrument for this type of planning called the **Sectoral Conferences**, agencies of multilateral cooperation that operate in a specific sector of public activity and have proven to be a potent instrument for collaboration between the State and Regional Governments.

To date, the Sectoral Conferences have proven their power as a coordinating force between public administrations to guarantee the principles of solidarity in public policy enforcement, equality of services and effective use of public resources.

Nevertheless, their operation is not uniform across the board. Of the 39 Conferences formed, only 21 of them have conducted constant activity in the past three years, and there are large differences in the activity carried out.

## Proposal

The deficiencies and duplications spotted in the data delivered by the Ministerial departments clarify the need to hold a joint-planning process between the State and Regional Governments to avoid the adoption of incoherent policies on the same subject.

Joint planning allows to **target problems and to set objectives jointly**, enabling policies to complement one another and bring about the achievement of common strategic goals; this is why planning should be approached from a cross-cutting perspective, folding in sectoral policies that produce synergic and complementary outcomes.

If we take as a model the internal ordinance and practice of the most active of the Sectoral Conferences, we can focus on concrete aspects of their operation in order to **support the functioning of those existing and strengthen the constitution of other new ones, in those sectors where inter-administrative coordination and joint planning are required.**

A general model should be used that is based on the procedure presently laid out in Article 7 of the Public Administrations and Common Administrative Procedure Act, including the following principles:

- So-called **joint plans and programmes** should have a greater role, since they contain the objectives established, actions to be produced and contributions to be delivered. **In this way, mechanisms must be set in place to integrate joint planning in all affected Regional Governments, surpassing the limitations of a plan whose successful effectiveness depends on the members who make up the Sectoral Conferences.**
- **Outcomes and implementation of best practices should be the predominant focus when adopting objective criteria for territorial distribution of credit allocated in the General State Budget.**
- **The frequency of meetings should be reinforced with a minimum timeline**, adding even greater dynamism to these bodies that have proven to be effective in coordination matters.
- **Horizontal collaboration instruments should be reinforced:** when we look at the whole picture, we can choose the best solution to maximise resources.

In the different reports delivered by the Departments, we have identified several areas where joint planning should be strengthened: development cooperation; information technologies; traffic and road safety; civilian protection, motorways, scholarships, culture, tourism, business support; infrastructures, statistics and victims of terrorism affairs, among others.

## C. PROPOSAL FOR INCORPORATING REGIONAL GOVERNMENT OFFICES ABROAD INTO STATE ADMINISTRATION BUILDINGS

### Present situation

In order for the State to adequately exercise its powers and effectively implement unified action abroad, there must be close cooperation between the State and Regional Governments so that the latter can efficiently carry out their jurisdictional actions abroad without prejudice to those jurisdictions of the State, within a framework of mutual institutional loyalty.

### Proposal

To this end, **there is a plan to bring the Regional Government offices located abroad into diplomatic mission offices whenever possible and when they so desire, in order to give Regions direct assistance in pursuing their interests, attain better coordination of functions and a more efficient use of available resources.**

This is also the objective of the Bill for Action Abroad and State Foreign Service which, under the recognition of the essential principle of unified exterior action, pursues the coordination of all public actors in the foreign context so that State External Action is truly unified and not just the amalgamation of sectoral actions. This project also strives to provide the State with planning instruments that will ensure coherence in all actions and an orientation toward common defined goals as well as ensuring full compatibility with the ends and objectives of foreign policy.

It is also necessary to mitigate the inadequacies of the current model that affect Spanish companies, frequently duplicating the resources and transactions facing companies pursuing international enterprise. This is even more poignant in a context of budgetary restrictions where the foreign market is becoming one of the keys to the country's economic recovery.

Regional Governments commit to assuming expenses derived from the operational and space-use costs which are necessary for the daily functioning in buildings which are upgraded yearly. These expenses will always remain substantially below those being borne currently, since in this way, resources can be streamlined economies of scale applied.

With the aim of incorporating Regional offices into diplomatic missions, a two-step procedure has been established as follows:

- **Collaboration protocol:** this is an agreement of intentions between each Region involved and the corresponding Ministry.
- **Collaboration convention:** once the Collaboration Protocol has been established, a Collaboration Convention is signed between the Regional Government and the Ministry where all details and timelines are set out, the costs, functioning rules and others.

To date, **Protocols and Conventions have been signed with the Ministry of Foreign Affairs and Cooperation (MAEC) and with the Ministry of Economy and Competitiveness (MINECO).**

**The Ministry of Foreign Affairs and Cooperation has subscribed to Collaboration Protocols** for its incorporation into the Spanish Permanent Representation before the EU with the Regional Governments of Asturias, Castilla-León, Galicia, La Rioja, Comunidad Foral de Navarra and the Comunidad Valenciana; and with the Canary Islands for its incorporation in the buildings of the Embassy in Nouakchott, Mauritania.

There are also pending signatures for the Collaboration Protocol with the Junta de Extremadura to join the offices of the Embassy in Lisbon and the formalisation of the Protocol signed with the region of Castilla-La Mancha to join the local offices of the Permanent Representation.

Along with these, **MAEC has subscribed to Collaboration Conventions** with the following Regional Governments for their incorporation into the Permanent Representation of Spain: La Rioja, Castilla-León, Asturias and Navarra; and the aim is to continue negotiating these instruments with other interested Regional Governments, whenever space is available.

In this same collaborative spirit, MAEC extended the offer **to Regional Governments to bring a diplomatic official into their head offices for specialised consulting on foreign policy**, the direct liaison with different areas of the Department. This liaison is deemed mutually beneficial and satisfactory, but the proposal has not yet been implemented.

**The Ministry of the Economy and Competition has signed Collaboration Protocols with** 12 Regional Governments: Valencia, Galicia, Castilla-la Mancha, Castilla y León, Aragón, Murcia, Cantabria, Canary Islands, Andalucía, Madrid, La Rioja and Extremadura.

Balearic Islands, Asturias and Navarra have little or no foreign network. Nevertheless, steps are being taken with a view to signing specific collaboration protocols. Basque Country and Catalonia rejected the integration offer at the Inter-territorial Council for Internationalisation of 28 February 2012.

Regarding **Collaboration Conventions** with the Regional Governments, six have been signed to date: Valencia, Galicia, Murcia, Cantabria, Andalucía and Castilla y León.

In correlation with the Protocols already signed, advanced negotiations are underway for Collaboration Conventions with Castilla-La Mancha, Aragón, Canary Islands and Madrid. Conversations are being held with Extremadura and La Rioja.

Regarding **international promotion and support for tourism**, Regional Governments show limited interest in opening their own offices abroad, generally relying on the support of State-run initiatives and the internationally prestigious image Spain has for tourism throughout the world. In other areas of General State Administration activity abroad, this has been the opposite.

The Spanish Tourism Institute (Turespaña) is at the helm of these operations. Turespaña is an autonomous organisation reporting to the **Ministry of Industry, Energy and Tourism** through the Secretariat of State for Tourism. It has a network of 33 Tourism Councils or Bureaus abroad, called OETs, which are established in seven geographical regions. They largely coincide with different market typologies: North America, Latin America, Northern Europe, Central Europe, Southern Europe, Eastern Europe and Asia Pacific.

Regional Governments have traditionally maintained close relations with this organisation to jointly configure international promotion of their destinations and products within the framework of a single annual plan based on co-financing for activities. In addition to this, some Regional Governments, specifically Andalucía, Catalonia and Balearic Islands, have provisions in their Statutes of Autonomy authorising them to establish networks of tourism promotion offices abroad.

Despite this, only ten specific centres created abroad for foreign tourism have been identified, and belong to Catalonia. The rest of the units for this are usually part of the trade or cultural promotion offices and not specifically tourism offices. Regarding these ten centres for tourism promotion, there is also a move to enter into Conventions to incorporate them into Diplomatic Missions offices.

## D. REGISTRIES AND DATA BASES

### Present situation

In general, the meetings convened between the Sub-Commission on Overlap and the different Ministries have revealed shortcomings in the coordination between different State and Regional registries that cause problems for managing the bureaucracy related to the same subject. In the end, the citizen perceives this as

a barrier of red tape created by the way administrations function. Common data bases enable the administration to store documents presented by citizens for other matters so that they do not have to repeatedly present these documents to different departments each time they start a transactional process.

Moreover, the absence of shared information systems renders it impossible to follow up on or effectively monitor public audits. This could be solved by designing comprehensive systems or correcting the information gaps existing today.

We can use as an example the National Grants Database run by the General State Comptroller of the General State Administration. After the entry into force of the Grants Act, this system will be applied to all territorial public administrations, who should publish all the grants awarded.

It is indispensable to comply with this obligation and guarantee the existence of a common database to enhance coordination between the different public administrations and avoid overlapping policies and services that citizens receive. It is obvious to everybody that, when a grant is awarded, it should be known whether another administration has already awarded funding to this organisation or project. This is not a way of monitoring other administrations' operations but of ensuring the best use of public resources.

## Proposal

There are many areas where having a common database and fluid flow of information between administrations can improve the use of resources, enhance integrated administrative policy and reduce complications for citizens.

Certain relevant proposals are included in the Ministries' measures. In this sense, this CORA report proposes an amendment to the **Grants Act aimed at strengthening communication channels among administrations to reinforce the existing oversight mechanisms.**

Similarly, the **Single Market Guarantee Draft Act** includes measures aimed at combining the data contained in different sectoral registries. This would ensure that the data included in different economic listings, entities or facilities would go into a common database and be available for those bodies with oversight powers to exercise these tasks of monitoring and control. The Ministry of Finance and Public Administration will be in charge of running this "one-stop" service in which all State, Regional and local bodies must pour their registries' data.

The Commission deems it necessary to **extend the use of integrated or totally interfaced databases between administrations across the board so that these become single and complete information sources for citizens and administrations.** With this we can streamline the bureaucratic public administration costs to citizens and greater transparency in administrative operations.

**Each Ministry will produce technical proposals for database integration and interface with those of Regional Governments for their presentation and approval at the corresponding Sectoral Conference.**

## E. OBSERVATORIES

### Present situation

The duty of an observatory is, in general, to follow up on a concrete phenomenon —usually economically or socially related— from a privileged vantage point. For different reasons, there has been a recent proliferation of observatories: the recognition of a greater number of social rights accompanied by more information available on the topic; the administrative decentralisation trend and others. To this end, a great number of State, regional and even local level observatories have been created that have different natures and structures and many times carry out duplicate tasks.

Each Regional Government has a different amount of observatories: most of them are found in Catalonia, Galicia, Basque Country, Madrid, Castilla y León and Andalucía. The Spanish regions with the great-

est number of observatories are Castilla-La Mancha, Cantabria, and the Balearic Islands. Some of the main **malfunctions** detected regarding observatories are:

- At times, the observatory's activities are carried out by outsourced companies or universities hired to do this, at a greater cost.
- Many observatories generate a large quantity of reports that are not disseminated and do not seem to draw great public interest, either because their existence is not known or because they are of little use to the economic agents making decisions. The general function of observatories is to gather information on different sectors or matters to later analyse the situation, design provisions for development and prepare reports that will lay the foundations for decisions responding to demands from the social sector in question. The observatory then exists to obtain information relevant to society and specifically to the sector it serves. An excess of observatories is not only a waste of resources, many times it also delays effective decision-making processes.
- There are territorial observatories that do not provide additional information to that provided by the National-level observatory.

## Proposal

There are matters where the existence of a regional observatory is justified because of the importance the sector under surveillance has to the region or its particular situation regarding the State on the whole, and requires individualised study. Many times the case is that the information is merely a version of the national reality reduced to a smaller geographical area creating not only a duplication of the task but a poorer analytical result due to the limited sample as well as the use of a different methodology from other administrations; this can hinder the comparison of results. For these reasons, **among the proposals of some Ministries are those of unification, integration and rationalisation of certain observatories. This critical analysis does not end with these proposals but must continue into the future overall.**

## F. ADVISORY BODIES, FISCAL AFFAIRS BODIES AND OFFICES OF THE OMBUDSMAN

### Present situation

The Spanish Constitution of 1978 established a State model that was flexible, open, and where Regional Governments had the capacity to set up functions and structures extending to the very limits permitted in the Constitution.

This regional enabling forged a territorial model in which seventeen political-administrative structures exist side-by-side with the State, each tending to imitate the State model. The imitation of this model has promoted the existence of seventeen legislative chambers with their respective Regional Presidents and Governments —which merely reflects the institutional model provided in the Constitution for certain Regional Governments. It has, however, also promoted the multiplication of other bodies which, although envisaged in the Constitution for the State, can at least initially be questioned in terms of effectiveness and efficiency when there are more of them.

Because of their relevance, we can highlight the numerous External Control Units (OCEX), Offices of the Ombudsman and Advisory Bodies that have proliferated in our Regional Governments. In all of these cases, the regional bodies cover identical jurisdictions as those of the State, within their respective administrations. However, in the case of the OCEX, there exists a paradox regarding the State Court of Auditors: it can also audit the regional administration, even following legislative power mandate, causing situations of inefficiency in management of public resources and poor quality outcomes. In these three areas, there



are Regional Governments that do not have these bodies and yet the public opinion does not reflect dissatisfaction, as we will point out.

## Proposal

There is no question regarding the competence of the Regional Governments to create these bodies. It is a question of considering the appropriateness, effectiveness and efficiency of these entities, even more so in these times of economic downturn.

For this reason, after cautious and detailed analysis of this sort of regional body, we examine the possibility of rationalising the **organisational network produced in the Regional Governments around the figures of the Ombudsman, External Control Units and regional advisory boards.**

### a) External Control Units (OCEX)

The existence of numerous OCEX has brought about situations of malfunctioning such as low yield from the resources allocated to them; scattering of the structures, composition and results of their work and overlapping accounts rendered to the Local Entities of the Court of Audits and to the regional auditing body.

There are four Regional Governments that do not have their own Court of Audits but this does not cast into question the State's correct auditing of their public accounts.

The question of possible elimination of the regional External Control Units due to overlap with the State Court of Audits was met with the analysis of the regulatory framework, budget, structure, staff and quantity of regional institution reports from the 2012 fiscal year, combined with the contributions from the citizen's suggestion box. **Based on this, the proposal is that the State Court of Auditors be the external auditing unit responsible for the surveillance of Regional Administrations accounts in order to rationalise and maximise the existing resources. To this end, twelve Territorial Sections will be created to correspond to the Regional Governments that have OCEX, with the exception of Madrid which is the headquarters of the Court of Auditors.**

**This will enable the Regional Governments with OCEX units to eliminate them and save on their annual budget.**

### b) Regional offices of the Ombudsman

Currently there are eleven regional offices of the Ombudsman after Castilla-La Mancha and the Region of Murcia eliminated theirs. Since they coexist with the State Ombudsman and their functions are basically the same except for the limitations by virtue of their territorial nature (either State or Regional) this proliferation has produced high costs in processing complaints and low performance of the human resources allocated to Regional Offices (compared to those 165 individuals on the State level that process 33,849 complaints, on the regional level 346 individuals process 38,407 complaints).

The Regional Governments that have eliminated this figure have not suffered a decrease in protection of citizen rights. These citizens still have the option to go to the Ombudsman by virtue of the rights enshrined in the Constitution. **In an attempt to achieve the greatest effectiveness and efficiency possible in processing citizen complaints, we propose that the State Office of the Ombudsman take on the full jurisdiction of those regional bodies. This will mean savings in the Regional Governments' annual budget previously allocated to sustain these offices.**

### c) Regional Advisory Bodies

There are currently seventeen Regional Advisory Bodies that coexist in our territorial system, along with the Council of State. These correspond to sixteen Regional Governments. The Region of Catalonia has two

institutions: the Council of Statutory Guarantees and the Legal Advisory Commission, whilst the Region of Cantabria has none. In general, the functions of regional institutions are similar to those of the Council of State but are limited to the respective Regional Governments and Administrations.

There is no question as to the prestige of the Council of State, nor of its skill in advising the Regional Governments on whatever they might need. In fact this is an option available to them. Nevertheless, contrary to what occurs in other institutions, regional law has conferred the issuance of opinions to the respective advisory board on many more matters than are meant to be handed over to the Council of State. Most of the reports issued by regional bodies for this motive are small pecuniary liability claims against the regional administration.

The rationalisation of the advisory structure can only take place in the case of **amendment of regional statute** which would change requisites for a regional body to hand down an opinion on those subjects that are now by obligation matters of the Council of State, for example, by raising the minimum for financial liability claims to €50,000, the quantity being what determines whether reporting to the State level is in order. Once this is done, **those functions now handled by the Regional Advisory Bodies could be borne by the Council of State, and save the Regional Governments the costs of maintaining these bodies.**

#### 4. MINISTERIAL PROPOSALS

The following are proposals to eliminate duplications by areas within the different Ministries.

**We must point out that through the Constitution, Regional Governments accede to the authorisation to self-organise in such a manner that they are able to choose the most convenient structure for them to carry out their functions.**

We do not question, therefore, the constitutionality or legal basis for the existence of Regional or State bodies that exercise certain powers in concurrent domains, since the stewardship and therefore the existence of the respective body is envisaged in the Constitution, the Statutes of Autonomy and the rest of the legal provisions.

**What is under the microscope is how a certain activity or service can continue to be rendered with equal or better quality at a lower cost. This could mean one body from another administration taking over the competence; this is possible through the existing cooperative channels.**

Today we can see quite relevant examples where functions that were conferred upon Regional Governments in their Statutes and executed in the past by their own entities or institutions (Ombudsman, competent tribunals, data protection agencies), have been undertaken more efficiently by their State counterparts, without breaching any jurisdictional framework. As examples, Castilla-La Mancha and Murcia have eliminated their offices of the Ombudsman, the Region of Madrid has eliminated its Data Protection Agency, Castilla-La Mancha has transferred procedural processing for the defence of competition to the National Competition Commission, without prejudice to citizens and yet reporting considerable savings to these Regional Governments.

**As a consequence, here we set forth some proposals for streamlining Regional Government that can be applied freely by virtue of the authority of self-organisation. There is little doubt as to the benefits in savings to citizens, guaranteeing at the same time compliance with the principle of "one administration one power".**

In other cases the proposal is not a recommendation to re-organise the jurisdictional functioning, but rather a regulatory type of initiative that the State can, either by virtue of exclusivity of powers or as the titleholder of the power to determine the regulatory bases on a certain matter, apply to all Regional administrations.



## A. MINISTRY OF FOREIGN AFFAIRS AND COOPERATION

### Present situation

The actions of the State regarding the jurisdiction of the Ministry of Foreign Affairs and Cooperation is based on Section 149.1.3 of the Spanish Constitution, while that of the Regional Governments was put into place by the Statutes of Autonomy, State and legal legislation and Constitutional jurisprudence on matters of development cooperation. This jurisprudence lays down the following basic principles of the distribution of power between State and Regional Governments, among others:

- A Regional Government cannot be excluded from carrying out certain activities, not only outside its own territory but even outside the territorial limits of Spain.
- The delimiting provision on the activities of the Regional Governments abroad is Section 149.1.3. This cannot be extensively interpreted here but this means that the limits of the Regional Governments are:
  - Regional Governments cannot be international subjects; this bars them from signing international treaties with sovereign States and international governmental organizations;
  - They cannot represent the Spanish State abroad, nor establish permanent representation bodies before said subjects;
  - They cannot undertake activities that bring about immediate and current obligations, neither for themselves nor the State before a foreign public authority;
  - They cannot undertake activities that affect, perturb or condition State foreign policy.

Undertaking of activity abroad is not, in general, obligatory but merely optional. For this reason, not all the Regional Governments act in this scope of competence with the same intensity. However, regarding the concrete application of this distribution of powers, all the Statutes of Autonomy contain provisions regarding each Region's scope of foreign activity.

The Ministry puts forth proposals in the following areas where some degree of duplication or overlap has been detected: Regional Government foreign offices abroad, development cooperation, conventions between the Spanish Agency for International Development Cooperation (AECID) and Regional Governments and Spanish contributions to International Organisations.

### Proposals

#### Regional Government offices abroad

There are a total of 166 Regional Government offices abroad, all highly diverse in nature both in legal terms as well as infrastructure, and even in functions. For this reason, the Ministry of Foreign Affairs and Cooperation, as set forth in the horizontal proposal included as the third General Measure of this report by the Sub-Commission on Overlap, is rolling out General Collaboration Protocols with Regional Governments so that these administrations can set up their offices abroad in the facilities owned by the State. These protocols are functioning correctly.

#### Development cooperation

Act 23/1998 of 7 July on International Development Cooperation establishes the Inter-territorial Commission on Development Cooperation and grants the Regional Governments a relevant role in the undertaking of these policies.

In only one decade, all Regional Governments have produced their own legislation regarding development cooperation; the first regional law on the subject was laid down by the Region of Madrid in 1999 and the most recent by the Canary Islands in 2009. The Sectoral Conference on International Development Cooperation was also formed in 2009.

At present, Andalucía, Asturias, Balearic Islands, Catalonia, Extremadura and Basque Country all have cooperation agencies, while Valencia and Castilla La Mancha have created Foundations to attain these ends. Other public administrations such as the local corporations also have cooperation policies.

We have, in this domain, found cooperation entities that have similar functions; on the one hand there is the **Inter-territorial Commission on Development Cooperation**, comprised of the General State Administration, Regional Governments and Local Entities and on the other, a **Sectoral Conference on International Development Cooperation**, comprised of the General State Administration (GSA) and Regional Governments with the participation of local governments through the Spanish Federation of Municipalities and Provinces.

**Given the similarities in functions and composition of the bodies and with the aim of eliminating the duplications, the two bodies were united and the Sectoral Conference on this, which held few meetings, was eliminated. The Inter-territorial Commission has been set up, by virtue of Act 23/1998, as the entity that coordinates and liaises between public administrations that engage in cooperation development.**

The Inter-territorial Commission should assume the joint planning principles outlined herein, to enable compliance with the public administration principles of collaboration, access and sharing of information and maximisation of public resources. This will bring greater effectiveness and efficiency to the process of identifying, formulating and executing programmes, projects and working groups in the field of development cooperation.

Moreover, there is a proposal for the **integration of Regional Government cooperation offices into the AECID Technical Cooperation Offices (OTC)** aimed at avoiding scattered and non-complimentary actions by different Spanish cooperation agents, simplifying procedures and strengthening shared use of infrastructures as well as possible, to generate synergies and foster coordination.

## Conventions

The Ministry will sign a **Specific Convention for the Creation of a Humanitarian Fund with Regional Governments**, focused on the collaboration among actors from Spanish development in the face of urgent action in cases of emergency and humanitarian aid in such a manner that overlapping does not occur and the aid arrives where it is needed in an organised manner. Similarly, this Convention will feed a common fund that is more efficient and has fewer operational costs, so that humanitarian aid contributions in emergency situations are no longer channelled individually by Regional Governments but done jointly through this mechanism.

## Rationalisation of Spain's contributions to international organisations

As an outcome of the permanent Working Group made up of Ministry of Foreign Affairs and Cooperation representatives, the Under-Secretariat of Finance and Public Administration, the Directorate-General for Budget, and representatives from each of the Ministries whose contributions will be considered, a single governing body will be adopted to create an organised system of compulsory quotas and voluntary contributions, as well as budgetary rationalisation.

**A single procedure will also be set up to authorise contributions to international organizations, with obligatory reporting from the departments in Foreign Affairs and Cooperation and Finance and Public**

**Administrations (Secretariat of State for Budgets and Spending). An inter-ministerial body will be created to spearhead the definition of the quotas policy.**

There will also be a **monitoring and surveillance system** set up by the Ministry of Foreign Affairs and Cooperation of Spanish donations to international organisations. MAEC will particularly monitor situations of possible surplus from Spanish contributions to international organisations. A single General State Administration database will be designed containing the most relevant of all the international organisation data, in such a way that clear information can be accessed on the qualitative and quantitative scope of the compromises taken on by Spain in each donation.

This set of measures will lead to the elimination or reduction of those contributions deemed dispensable.

**B. MINISTRY OF JUSTICE**

**Present situation**

Section 149.1.5. CE (Spanish Constitution), establishes that jurisdiction over matters of the administration of justice corresponds to the State. This precept confers jurisdiction exclusively to the State over the administration of justice, while Section 152 establishes a regional territorial configuration of said power by providing a Superior Court of Justice as the top judicial organisation in regional territory, as well as allowing for the participation of the Regional Governments in the organisation of legal delimitations, all of which lies within the unity and independence of the Judiciary. The Regional Statutes have progressively included precepts that envisage the participation of Regional Governments in managing the “instrumental organisation” at the service of the Judiciary. These rules, upheld by the doctrine of the Constitutional Court, favour the devolution of what has been called “the workings of the Justice Administration”, i.e., human resources, material and economic resources.

As a result of this distribution of powers system, there are currently twelve Regional Governments that have devolved powers regarding justice administration personnel, material and economic resource management: Madrid, Galicia, Asturias, Cantabria, Basque Country, Navarra, La Rioja, Aragón, Catalonia, Comunidad Valenciana, Andalucía and the Canary Islands. Alternatively, there are five regions and two self-governing cities that do not have transferred powers on matters of justice administration: Castilla y León, Castilla-La Mancha, Extremadura, Murcia, Balearic Islands, Ceuta and Melilla.

The Ministry of Justice has tabled a series of measures in the following areas of its competence where it has spotted inefficiencies or duplications: creating a joint planning instrument for technology through the creation of a State Technical Committee for Electronic Judicial Administration; the implementation of the Single Registry for Foundations; the hand-over of data protection done by agencies in Basque Country and Catalonia to the Data Protection Agency; and different measures regarding service staff at the Justice Administration.

**Proposals**

**Technology joint planning**

Review of information and communications technologies utilised by different territories and public bodies at the head of justice administration reveal the need for increased inter-operability in this area for a more efficient and economical functioning of the justice system.

For this, CORA has pushed for the inclusion of a provision in the reform of the Judiciary Power Act granting the Council regulatory powers to lay down bases and standards for the compatibility of computer systems used by the justice administration. This will facilitate **joint planning for technology resources and guarantee the compatibility and inter-operability needed between different legal procedure systems.**

**The Council of Ministers approved Royal Decree 396/2013 on 7 June which lays down the creation of the State Technology Committee for Electronic Judicial Administration.** This body will comprise the General Council of the Judiciary, Ministry of Justice, Regional Governments and the Office of the Public Prosecution. **This coordination and joint planning body operating in applied technology for the Justice Administration will be instrumental in preventing administrative overlap in this area.**

Through new provisions for joint technology planning to be conferred upon the General Council of the Judiciary, the Technology Committee will spearhead the projects aimed at better coordination of applications in the Justice domain, ensuring the interface and connection of all systems so that information on different proceedings be at the disposal of judicial bodies across national soil.

## Single Registry for Foundations

The Foundations Act 50/2002 of 26 December envisages the creation of a single registry for foundations placed under the aegis of the Ministry of Justice (Section 36) and within competence of the State. Section 34 establishes that the General State Administration will exercise supervision over it.

Royal Decree 1337/2005 of 11 November, which approved the Regulations for Foundations of State Competence, established that the supervision of these would fall upon the different Ministerial departments. It stated that foundations of State competence would come under the aegis of the General State Administration through those Departments whose jurisdictions were related to the aims of the foundation. To date the Foundations Registry has not been created at the Ministry of Justice. For this reason, there are still dispersed registries, most importantly, those of the Ministry of Education, Culture and Sports and the Ministry of Health, Social Services and Equality. This situation leads to a scattering of material and human resources in a budgetary context where the rationalisation of resources is more important than ever.

This situation becomes compounded with the existence of supervisory bodies, and the functions of these are not governed by a set of common criteria, a situation that evidences the need for one single body to encompass all State foundations except those special cases that do not apply.

**The measure proposed is the effective implementation of a Single State-level Foundations Registry that will store data on foundations with a nationwide scope of action and especially on those that cross more than one Region; the establishment of a Single Foundations Supervisory Department is also part of this measure.**

## Data Protection Agencies

Currently, the legal provisions regarding data protection and the extension of the Spanish Data Protection Agency (AEPD) jurisdiction is uniform, being one sole unit as regards the public and private sector, with the exceptions of the Regional Governments of Basque Country and Catalonia, which have their own Data Protection Agencies. These are established by: Law 2/2004 of the Basque Parliament of 25 February, for Personal Data Files in public stewardship and the creation of the Basque Data Protection Agency and by Law 32/2010 of 1 October for the Catalan Authority for Data Protection, respectively.

Together with said agencies, a third authority existed which was the longest standing: the Madrid Regional Government Data Protection Agency, regulated by Law 8/2001 of 13 July for the Protection of Personal Data; it was eliminated in 2012 and its functions were taken over by the AEPD.

**After studying the functions carried out by the regional agencies and the existing AEPD infrastructure, it has been observed that the AEPD could take on the functions of the former, resulting in budget reductions for the respective Regions.**

## Management of retirement for Justice Administration personnel

The staff pools serving the Justice Administration are similar in nature, since they engage in nation-wide occupations, whether or not the Region they correspond to has transferred powers or not. This is also the case with court clerks and prosecutors. The Office of the Public Prosecution has its own bodies, in accordance with the principles of unified action and hierarchical reporting.

However, in the twelve Regional Governments that have the transferral of powers for Justice, the retirement of civil servants from professions and grades of public service is the responsibility of the Ministry of Justice who handles this through the Territorial Management and Sub-directorate General for human resources of the Justice Administration, as provided in the Judiciary Power Act (LOPJ).

The measure proposed is the **amendment to the Judiciary Power Act transfer the responsibility and management of retirement of Justice Administration personnel (general and senior staff) to those Regional Governments that have conferred upon them jurisdiction over Justice matters, including cases of possible extensions of service.**

This would expedite retirement paperwork for said personnel and make for a more streamlined organisation, since the same Regional Governments would be those who manage all other matters regarding the Statute and legal scheme for these employees.

## Recruitment of Justice Administration personnel

The selection processes for Justice Administration service personnel are unique. They are convened and decided by the Ministry of Justice; the examination programme is the same for all positions with the exception of optional tests that are established to accredit language knowledge, local civil law or specific Regional laws.

For each body and process, two types of tribunals are formed, of identical composition: the so-called "single" Qualifying Tribunal; and Representational Tribunals, in each of the Regional Governments that have been set up as being "territorial". Appointment of both the "single" and "representational" tribunals is done by the Ministry of Justice, although in the latter case, Regions can propose a part of its members. In practice, this complex system leads to different situations depending on the professions in question and the type of exams for each selection process.

This system of grading tribunals, because of its design, is not only impractical but also unnecessarily costly. It does not fulfil any useful function that cannot be replaced with more economical and functional systems. It also gives rise to a greater number of litigations. **Consequently, the Ministry will eliminate the representational tribunals from those exams where they carry out merely administrative functions that can be satisfied by any of the Regional Government bodies of that nature.**

## C. MINSITRY OF FINANCE AND PUBLIC ADMINISTRATION

### Present situation

Pursuant to Section 149.1.18 of the Spanish Constitution, the State has general exclusive powers over "the foundations of the legal status of public administrations and of the statutory status of civil service workers and in any case will guarantee the latter common treatment across the administrations, while respecting those particularities stemming from Regional Government organization; legislation regarding eminent domain; basic legislation governing contracts and administrative concessions and the accountability system of all the public administrations."

The Ministry of Finance and Public Administration has analysed the whole of the department's operational areas, as well as those corresponding to Regional Government jurisdictions. Following these studies,



a set of proposals were tabled to avoid duplications in the areas of: centralised contracts, businesses classification, contracts platform and advisory boards for contracts, contract appeals tribunal and technology transfer centre.

Regarding the National Institute of Public Administration, the proposal focuses on the online learning repository and a single and centralised self-learning platform with broad-scope, open courses for all public administrations. Lastly, a measure is being put into place for the admission of electronic certification by public administrations.

## Proposals

### Central Procurement Body

Articles 203 to 207 of the Public Sector Contracts Act regulate centralised procurement bodies and establish that, within the General State Administration, the Ministry of Finance, through the Directorate-General for National Heritage can make decisions on the centralised procurement of supplies, work and services generally purchased under contract by different bodies and organisations and are essentially similar in nature. **Regional Governments, local entities, regional organisations and public entities that report to them can be part of the centralised state contracts system.** Currently, the Regional Governments of Madrid, Murcia, Navarra and Valencia regularly use the State centralised contracts system for most of their purchases. Catalonia, the Basque Country, Aragón and Andalucía have had their own centralised procurement systems for years and the Balearic Islands and Valencia are in the midst of launching this type of contracts system.

Tendering companies repeatedly request a system for Regional Governments that does not duplicate that of the State. They face the complications of presenting a bid within a contracts processing system where the same goods and services may require different application requisites and where there is little time to apply. In order to obtain better conditions and prices for contracts on common goods and services as well as reduce paperwork and time spent both by procurement agents and bidders, **we propose State-wide centralised contracts by adherence of Regional Governments to a State contracts procurement body, currently managed by the Directorate-General for National Heritage. Regional governments can maintain their own central procurement systems in sectors in which the State does not operate.**

### Qualification status for businesses authorised by Regional Governments and regional registries for Official Register of Bidders and Qualifying Businesses (ROLECE)

Articles 65 to 71 of the Consolidated Public Sector Contracts Act refer to businesses' qualifying status. They establish that a business owner must be duly qualified before entering into contract with public administrations for building work with an estimated cost of €350,000 and over, or service contracts for the value of €120,000 and over. These thresholds for qualification will be raised in the forthcoming **Support for Business and International Engagement Act, for this has been a hindrance to many companies.** Namely for contracts involving construction work, the threshold will raise to €500,000 and for service contracts, €200,000.

On a State-wide level, the Sub-Directorate-General for Contractor Qualification and Contract Register is in charge of deciding qualifying status for businesses, verifying their technical and financial solvency for application throughout national territory. Regional Governments have the option to create bodies that determine qualification with a scope limited to their own contracts and those of local corporations on regional soil. Regional Governments of the Balearic and Canary Islands, Catalonia, Basque Country, Murcia and Valencia have their own business certification bodies. **Processing a business's qualification status by Re-**

gional Governments is a redundant exercise since those certifications granted by specialised committees of the General State Administration contracts advisory board are applicable for all procurement departments. These certifications involve technical assessments carried out by specialised personnel using uniform methodologies, making this centralisation much more efficient.

Our proposal is thus that the Regional Governments of Balearic and Canary Islands, Catalonia, Basque Country, Murcia and Valencia utilise those qualification assessment bodies reporting to what will be the Public Sector Administrative Contracts Advisory Board. Furthermore, the Public Sector Contracts Act will be amended in order to unify other registries of regional bidders and qualifying businesses—which duplicate content and functions of the Regional Government Registry— folding all of this into a single Official Public Sector Registry of Qualifying Bidders and Businesses.

### Public sector contracts platform

Article 334 of the Consolidated Public Sector Contracts Act establishes that the State Administrative Contracts Advisory Board will make available to all public sector procurement bodies an electronic platform that will announce all calls for tenders and their results, as well as any information relevant to open contracts and other complementary internet services in this regard. In all cases, the profiles of the bidder provided by the state public sector procurement body will be entered into this platform and be managed and published exclusively using this tool. The State Contracts Platform will be interfaced with similar information services designed by Regional and local governments in the manner described in the agreements entered into for these purposes.

**With the Single Market Guarantee Act in force, the State contracts platform will be called the Public Sector Contracts Platform and will allow economic actors to access aggregate information on public contracts and reduce the costs to Regional Governments incurred in managing their portals and platforms.**

The Regional Governments that currently have contracts platforms are Andalucía, Balearic Islands, Catalonia, Ceuta, Galicia, Madrid, Melilla and Valencia. Those with contracts portals: Cantabria, Castilla y León, Castilla-La Mancha, Extremadura, La Rioja, Murcia, Navarra and Basque Country; and those with bidder profile bases: Aragón, Canary Islands and Asturias.

Wherever Regional Governments have their own contracts platforms for publishing their calls for tenders, the **Ministry will enter into agreements with them to make these notices available exclusively on the Public Sector Contracts Platform**, saving on the costs derived of the maintenance of regional platforms.

### Administrative contract advisory boards

Article 324 of the Consolidated Public Sector Contracts Act establishes that the Administrative Contract Advisory Board is the specified advisory board for the General State Administration (GSA), regional bodies, agencies and other State public entities regarding administrative procurement. The advisory boards created by Regional Governments will operate in their respective territorial domains for procurement for regional administrations, the bodies and organisations reporting to or linked to them; if this is so established, it will apply as well to the local entities that are covered in their regulatory ordinances, without prejudice to the jurisdiction of the State Advisory Board.

**Aimed at avoiding the duplications found and the application of differing criteria between State and regional boards for similar cases or even duplications in the request for reports on the same subject by local entities, we propose that the Public Sector Administrative Contract Advisory Board take over the tasks currently carried out by the regional boards. This will ensure unified criteria for all bidders and reduce administrative costs.**



## Contract appeals tribunal

Article 41 of the Consolidated Public Sector Contracts Act establishes a State-wide specialised body in charge of recognition and resolution of special appeals for contracts. This body will exercise within its jurisdiction with full operational independence. To this effect, the Central Administrative Tribunal for Contract Appeals will be created, and will report to the Ministry of Finance and comprise a president and at least two members.

Regional Governments can, at any rate, constitute their own bodies or confer the power for resolution of appeals to this Central Administrative Tribunal for Contract Appeals. **To this effect, the Region must enter into the corresponding agreement with the General State Administration, stipulating the conditions under which it will pay the expenses incurred in taking on this competence. Agreements have already been signed with seven Regional Governments and the same has been proposed to the remainder.**

## Technology transfer centres

The Technology Transfer Centre (CTT) aims to reutilise technology solutions across all the public administrations. Together with the national Centre, other regional centres have appeared, namely in Galicia, Extremadura, Andalucía, Catalonia and Basque Country. This reduces the incidence of integration, maximisation and reutilisation of different applications designed.

As an interim measure whilst firstly, the centralisation of the General State Administration technology resources gets underway and secondly, a proposal is made for regional governments to adhere to a centralised unit, **mechanisms will be put in place to guarantee that the national Technology Transfer Centre contain all the solutions included in the Regional Governments' technology transfer centre, as well as measures guaranteeing that these resources are taken advantage of properly.** More information is available in the specific section on Sub-Commission for Management of Services and Common Resources.

## National Public Administration Institute

The report issued by the Institute of Fiscal Studies mentioned in the introduction of this chapter, points out the proliferation of regional public administration training institutes. The need to optimise training in Regional Governments and local corporations demands the sharing of resources and determination of what courses contain added market value. The National Public Administration Institute has launched a project called "Compartir" (Share) with the objective of rationalising the programmes of different public administration training and selection centres. This Institute has initiated a project that **compiles on-line educational resources to avoid the overlapping of those designed by Regional Governments and the State. 262 courses have been entered and made available to training teams. Seventeen Regional Governments, the autonomous cities of Ceuta and Melilla as well as local entities, through the Spanish Federation of Municipalities and Provinces, have adhered to the project.**

In this same spirit of optimisation of resources, the National Institute of Public Administration has designed an **on-line repository of courses.** The objective of this repository is to provide a centralised technological system for knowledge accessible to all Regional Governments, where each and every training activity can be stored.

Moreover, to avoid duplications in training, the National Public Administration Institute has built a **single, centralised self-learning platform of broad-scope on-line open courses for all the public administrations.** The Institute is also promoting a competence certification system associated with these open courses and it will enjoy the collaboration of regional and local training centres across Spain. The aim of the project is to build a platform for managing open education and offer it to all interested Regional and

Local Governments who qualify so that they can offer this training modality without having to design their own systems.

### Public Administration admission of electronic certificates

There are three Regional Governments (Catalonia, Basque Country and Valencia) that have their own authority for electronic certification. This raises the possibility of entering into agreements with these Regional Governments to ensure comprehensive admission of electronic certificates by public administrations to guarantee the functioning of the national system. This verification system of electronic certificates is defined in Article 25.3 of Royal Decree 1671/2009 of 6 November, which partially enacts Act 11/2007 of 22 June on electronic access for citizens to public services. Furthermore, **said Regional Governments will be invited to partially or fully utilise the General State Administration certification services, providing this yields greater efficiency in rendering certification services to citizens and reduction of costs involved.**

#### D. MINISTRY OF THE INTERIOR

##### Present situation

The State has exclusive jurisdiction over motor vehicle traffic and circulation (Section 149.1.21. CE); public safety —the possible creation of police forces by Regional Governments notwithstanding— pursuant to their respective Statutes within the framework provisions of an Organic Act (149.1.29. CE); and authorisation for holding popular consultations by way of referendum (149.1.32. CE). It is also incumbent upon the State to regulate the basic conditions for guaranteeing equality of all Spaniards in the exercise of their rights and in the fulfilment of their constitutional duties (Section 149.1.1. CE). The Ministry of Interior has tabled a set of proposals in the following areas where duplications have been found: joint planning for assistance to victims of terrorism, civilian protection, electoral processes, traffic and road safety.

##### Proposals

##### Joint planning for assistance to victims of terrorism

Duplications have been found between Regional Governments and the State regarding the granting of aid. An important part of providing support for victims of terrorism lies in assistance, an area in which Regional Governments have exclusive competence by Statute with the exception of that of the State regarding the regulation of the basic conditions that guarantee equality to all Spaniards in the exercise of their rights and in fulfilment of their constitutional duties (Section 149.1.1 CE).

Although there is no express statutory conferral of these matters, the Regional Governments of Andalucía, Aragón, Madrid, Navarra, Valencia, Extremadura, Basque Country and Murcia have created their own legislation establishing a scheme of compensations and aid complementary to that of the State. This has brought to light inefficiencies regarding the unequal coverage of victims of terrorist attacks depending on where they reside, as well as possible overlapping of measures for fostering and supporting social movement.

In this regard, the Ministry of Interior has adopted an instrument for joint State and Regional-level planning for **assistance to victims of terrorism within the framework of a cooperation body formed between the State and Regional Governments, in accordance with the modification established in the new Section 7 of the Public Administrations and Common Administrative Procedure Act.** The objective will be

to assess the different programmes for grants, agreements with associations and entities supporting these collectives, as well as aid given to victims of terrorism, with the aim of maximising the resources allocated for this, becoming more efficient in the allocation of resources.

## Civilian protection

The Constitutional Court has declared that the State's jurisdiction in matters of civilian protection falls under the powers that Section 149.1.29 CE confers on the State for civilian safety and that it is concurrent with the Regional Governments' own jurisdiction (STC 123/1984 and 133/1990). Furthermore, the Constitutional Court has pointed out which situations of national concern call for the intervention of the State.

On an organisational level, there is a certain "partial duplication" in that the Disaster Support Units (UAD), created through Royal Decree 1123/2000 of 16 June no longer have authorisation to act on a domestic scale, as of the creation of the Military Emergency Unit (UME), a substantial measure of State support to the Regional Governments in cases of disaster. **To avoid this organisational and functional overlap, the Disaster Support Units will be eliminated.**

**Moreover, planning processes must be improved** to achieve shared strategies and design and implement an assessment and inspection system functioning under common guidelines or plans. The creation of a **Sectoral Civilian Protection Conference is foreseen that will follow the terms established in the new joint planning instrument.**

In this same area, a proposal has been made to mobilise units and resources of one Region to address an emergency situation in another Region through the conclusion of a **Collaboration Framework Agreement for emergency management between the Ministry of Interior and the competent Councils in civilian protection matters.** For this purpose, an updated inventory of available resources will be created.

## Electoral processes

Pursuant to Section 81.1. of the Spanish Constitution, Spanish electoral procedures can only be modified by organic law. On the other hand, Section 149.1.32 CE confers exclusive power to the State to hold popular consultations through referendum, which, in accordance with Constitutional Court Decision STC31/2010, the entire institution of referendum must be understood as being under the jurisdiction reserved for the State.

These constitutional provisions were implemented through Organic Act 5/1985 of 19 June, on the Electoral Procedures and Organic Act 2/1980 of 18 January, on the Regulation of Different Modalities of Referendum.

The provisions of the Electoral Procedures Act do not preclude the powers that the Regional Governments have by virtue of their respective Statutes over the election of their legislative assemblies which are regulated under their corresponding regional laws. At present, Catalonia is the only one without a regional electoral law. It is incumbent upon the Directorate-General for Domestic Policy to **implement the powers conferred upon the Ministry of the Interior in electoral processes and popular consultations at the State level.**

In this area, however, on occasion of the periodical meetings held between the Directorate-General for Domestic Policy and the regional authorities in electoral processes, operational shortcomings have been found that stem from the lack of determination on the part of the administration in charge to assume certain tasks and the expenses incurred. **For this reason, in the draft Royal Decree for complementary regulation of electoral processes, an outline is established for financial responsibility in the case of regional electoral processes and cooperation established between the State and the Regional Governments for managing electoral processes.**

To further reinforce cooperation with regional authorities in managing electoral processes, the **Ministry will sign a framework collaboration agreement on electoral operations when elections occur simultaneously** (in 2011, ten collaboration agreements were signed with the majority of the Regional Governments that held elections in May 2011 with the objective of sharing resources).

## Traffic and road safety

The State holds exclusive powers in matters of traffic and motor vehicle circulation (Section 149.1.21. CE) and exercises them through the Directorate-General for Traffic (DGT) and the autonomous body, the Central Traffic Headquarters, to which the Guardia Civil Corps Traffic Division reports.

The jurisdiction over approval of basic technical standards, standardisation of vehicles, driver's education, approval of requisites for drivers' licenses, establishment of minimum requirements for testing and regulation of transport of goods and persons, amongst others, is incumbent on the General State Administration.

Some Regional Governments (Basque Country, Catalonia and Navarra) have taken on certain executive jurisdiction over matters such as authorisations, traffic surveillance and discipline, road safety, registers for driver's education instructors and others.

CORA considers that the standing mechanisms for coordination between the State and Regional Governments are not sufficient and offer room for improvement.

In Catalonia, we see a specific lack of strategy for systematic inspection of private driving schools as well as testing for driver aptitude; this calls for better coordination between the Directorate-General for Traffic and the Catalan Traffic Service through the reactivation of the Traffic Commission created within the Catalan Safety Board, as well as through the signing of a **Cooperation Agreement on inspections of private driving schools and driver aptitude testing centres**.

In relation to more strategic issues and bearing in mind that there are also other **Regional Governments with conferred powers in traffic matters, it becomes imperative to have more comprehensive planning**. The Strategic Plan for Traffic Safety includes these types of measures. For this reason, the Ministry will adopt an instrument for **joint State and regional planning on traffic and road safety through the creation of a joint Sectoral Conference to be the liaison between both administrations, in accordance with the amendments of the new Article 7 of the Public Administrations and Common Administrative Procedure Act**.

## Coordination between the Nature Protection Service (SEPRONA) and other State and Regional agents with jurisdiction over Nature conservation and Environment.

For better coordination between SEPRONA and other State and regional agencies with jurisdiction over Nature conservation and environmental issues, the Ministry of Interior together with the Ministry of Agriculture, Food and Environment, after analysing the Regional Governments' jurisdiction over Nature conservation and those functions entrusted to the State, will adopt a protocol. This protocol will establish actions and unified criteria for investigating environmental crime in order to curb failings in the system—even in the criteria found for reports issued to judicial bodies investigating certain subjects. Specific focus will be made on fixing a clear system to determine the order of precedence for different acting agents; obligations will be enforced for agents acting as generic judicial police who are not law enforcement agencies or bodies to communicate their acts to these Agencies. Government Delegations and Sub-delegations and the National and Provincial Judicial Police Commissions will be involved in administrative level coordination in cases where jurisdictional conflicts arise; the duties of forest officers in judicial police service will be more clearly delimited and the coordination of pre-procedural actions will be strengthened through the Office of the Public Prosecutor.

## E. MINISTRY OF INFRASTRUCTURE

### Present situation

**Powers pertaining exclusively to the State** and managed by the Ministry of Infrastructure are:

The undertaking of infrastructure and public transportation works (land, air and sea) that affect more than one Region or are of general public interest (Section 149.1.24. CE); monitoring, ordinance and regulation of land transport services (by motorway, railway or cable) that cross more than one Region or are of general interest (Section 149.1.21. CE); management of air transport, air space, general-interest airports and meteorological services (Section 149.1.20. CE); management of the shipping trade and general-interest ports (Section 149.1.20. CE). Also, the establishment of general procedures and legal ordinance for communications: post, telegraph, telecommunications, radio and cable (Section 149.1.21. CE).

Those powers that **Regional Governments can take on** in similar matters are: the undertaking of infrastructure and public transport works (land, air and sea) in their own territory; monitoring, ordinance and regulation of transport services (by motorway, railway, cable and sea) that cross their territory; management of airports in their territory: recreational, non-commercial and not of public interest; management of the ports in their territory: ports of haven, recreational, non-commercial; as well as territorial planning, urban planning and housing.

### Proposals

#### Roads

In order to avoid overlapping in management regarding roads, **legislation will be amended to allow the city councils to be transferred sections of State motorway so they become urban through roads with no charge to them.**

In order to maximise resources at the disposal of the Directorate-General for Roads, **sharing of infrastructures will take place with the Regional Governments. These buildings, laboratories, workshops and machinery fleets can be optimised to better preserve the roads in a given area that have until now been under different stewardship networks.**

Lastly, **a joint planning project will be launched to** incorporate some highways pertaining to other administrations into the State Highway Network and devolve the jurisdiction over some others to Regional Governments, **thus optimising conservation costs.**

#### Astronomy, Geodesy, Geophysics and Cartography

**Act 14/2010 of 5 July on Infrastructures and Geographic Information Services in Spain (LISIGE)** and Royal Decree 1545/2007 of 23 November regulating the National Cartography System are the two main norms that regulate this sector and establish a certain division of powers between the State and Regional Governments.

The Ministry of Infrastructure has two agencies that manage these matters: **Directorate-General of the National Geographic Institute** (reporting to the Under-Secretariat of Infrastructure) and the **National Geographic Information Centre** (CNIG), and independent body. There is also a third advisory body, which is the **National Geographic Council** (CSG).

The **General-Directorate of the National Geographic Institute** is in charge of programming the National Cartography Plan: the production, updating and implementation of topography and cartography bases; planning and management of nation-wide geodesic land coordinate systems; projects and research on astronomy, geodetics, geophysics and detection and warning systems for seismic and volcanic activity. The **National Geographic Information Centre** sells and diffuses its cartographic production nation-wide and inter-



nationally. Lastly, the **National Geographic Council** is an official body that acts as an advisory and planning board regarding geographic information; it is presided over by the Under-Secretary of Infrastructure and comprises several members representing diverse Ministries as well as the Regional and Local Governments.

There are as well **Four Regional Governments with agencies dealing with cartography**: The Andalucía Institute of Statistics and Cartography, The Cartography Institute of Catalonia, The Cartography Institute of Valencia and the Technological Agrarian Institute of Castilla y León, which produces and sells cartography products.

The **Spanish Infrastructures and Geographic Information Services Act** allows for redundant production of cartographic productions, meaning studies of the same territory are conducted by the State and Regional Governments; regional geodetic coordinate system networks are deployed that duplicate those at the national level; there are **regional cartography registers** (there are six of these: Aragón, Andalucía, Catalonia, Castilla y León, Canary Islands and Extremadura) existing alongside the central registry; as well as the Space Data Network (IDE) which contains free-access portals with geographic information, maps and view-finders existing in almost all the Regional Governments. These are duplications detected as a result of the provisions of this Act.

In order to eliminate these overlapping functions and shortcomings, the following measures have been adopted:

- **Optimisation and coordination of the State geodetic infrastructures for geographic survey and land navigation, by broadening the National Geodetic Network from 37 permanent stations to 62 (deploying fourteen new stations and utilising eleven of the regional stations).**
- **The National Geographic Institute will take over the functions in the area of cartography that are currently carried out by regional cartography institutes and entities, allowing for the latter to be closed. Within the National Cartography System framework, coordination mechanisms have been created in recent years to ensure its correct functioning, but there are still instruments pending implementation in order to achieve the ideal circumstances that will mean transferring sole competence to the National Geographic Institute, fostering the participation and cooperation of Regional Governments through official bodies. This proposal demands that the National Geographic Institute takes on the jurisdiction over geographic information and takes advantage of the National Geographic Council and its member bodies to search further for efficiency as well as the Regions' participation and cooperation.**

### **AESA (State Agency for Air Safety)**

The State has jurisdiction over the general-interest airports while the Regional Governments have jurisdiction over the rest —recreational and restricted use, among others. However, only five Regions —Catalonia, Madrid, Navarra, Valencia and Aragón— have taken on these powers. In the rest of the cases, it is the State Air Safety Agency (AESA)<sup>1</sup>, who assumes responsibility for planning, authorising, building, managing and inspecting the regional airports not of general interest.

There are also certain aspects of these regionally supervised airports that must be inspected by the State authorities, such as operational security maintenance, aspects related to the operation and utilisation of restricted-use aeronautic infrastructures. Consequently, there may be airport inspection units that overlap, or even facilities.

For these reasons, **we propose the establishment of an annual joint inspection plan between the General State Administration and Regional Governments, pursuant to** Royal Decree 1189/2011, which regu-

<sup>1</sup> Apart from this, the AESA has its own powers State-wide: airspace monitoring, weather services, air transit and transportation.

lates diverse aspects of air field planning and traffic activity. **This inspection will be carried out by the Agency Inspectors from the State Air Safety Agency in restricted-use aerodromes in order to prevent the duplication of inspection procedures. Regional Governments will thus be able to eliminate the infrastructures needed to carry out these functions, which will reflect in their annual budgets earmarked for this.**

## F. MINISTRY OF EDUCATION, CULTURE AND SPORTS

### Present situation

On educational matters, in accordance with the provisions of Section 149.1.30. of the Spanish Constitution, the State has exclusive competence over the regulation of the conditions for obtaining, issuing and recognising academic and professional degrees; it also has competence over basic legislation for the application of Section 27 of the Constitution, guaranteeing the right to education and the freedom to educate in order to ensure the fulfilment of public authority obligations in educational matters. On cultural matters, the exclusive areas of competence the State has are: legislation on intellectual and industrial property (149.1.9); the defence of cultural, artistic and architectural heritage from export and spoliation; museums, libraries and archives belonging to the State without detriment to the management of these by the Regional Governments (149.1.28).

In the three Ministerial domains, duplications have been found at different levels. This is due to the distribution of powers in the three domains—in education it is more strictly outlined, but more diffuse in culture and sport—which has led to the multiplication of very similar administrative structures on State and Regional Government levels.

In **Education**, despite the distribution of powers being quite well defined in this domain, there are still areas where we see duplications occurring and it is here that the Ministry proposes action to align the systems. To cite one of several examples, there are a multitude of platforms and registries for educational centres that scarcely interact in their operations, there are different procedures for evaluating different aspects of the educational and university systems and there are several entities that carry out similar functions in research support.

As opposed to education, in the cultural domain most of the jurisdictions overlap, giving rise to State and Regional intervention in the same matters and define their areas according to the stewardship of the service in question, on some occasions, and geographical placement in most cases. An example of this instance is the lack of cooperation for creating policies that foster reading; another is the need to more efficiently utilise the resources in the hands of theatres—opera, Zarzuela and other different national performing groups under the auspices of the Ministry.

Regarding **sport**, the Spanish Constitution does not confer any powers on the State. Nevertheless, this has not barred it from intervening in different matters based on overarching territorial criteria and international promotion of Spanish sporting competition, in accordance with Constitutional legislation and case law.

### Proposals

#### Education

##### Platform for educational centre management

There are at least sixteen platforms for managing educational centres in Spain—one State and fifteen regional—and eighteen non-university education platforms.



**To make the best use of economies of scale and subsequently obtain better efficiency, we propose sharing those existing platforms. This would entail a detailed analysis of each programme and the technical and statutory viability.**

### Non-university education centre Registries

In parallel with the State registries, most of the Regional Governments have created their own management registry for educational centres whose basic function is to keep track of their regional non-university educational centres. Thus we have a double registry. **In the view of efficiency, the process will begin with the guarantee that the Regional Governments send their registry entries to the central registry in a timely fashion and in due form and these will later be available for direct incorporation into the State database.**

### Educational assessment

It is incumbent upon the State to evaluate the overall educational system —its design as well as organisation— through the National Institute of Educational Assessment.

Nevertheless, the Regional Governments have created their own territorial educational assessment institutes that organise a set of tests based on “evaluation units” using surveys on linguistic and mathematics competency.

In the draft Better Quality Education Act (LOMCE), a plan is envisaged for the transformation of the system in order to **interconnect the State and Regional education assessment instruments**, which should lead to the downsizing of the regional assessment units.

### Universities

**Regarding the assessment of curricula leading to official university degrees**, the State has the authority to regulate the conditions for obtaining, issuing and recognising academic and professional degrees, through the National Quality and Accreditation Assessment Agency (ANECA).

Along the same lines, there are four Regional Governments (Catalonia, Castilla y León, Andalucía and Galicia), that have internationally recognised assessment agencies and therefore are qualified to evaluate curricula for Universities (degree assessment); while another six (Aragón, Canary Islands, Madrid, Valencia, Balearic Islands and Basque Country) have assessment agencies with competence only to issue reports on the renewal of accreditations already granted.

At any rate, the National Quality and Accreditation Assessment Agency can handle the assessment of both degrees and individuals, regardless of geographical location. This means there are two administrations carrying out the same function in the same territory.

Given this duplication of tasks and considering the methodology applicable and the fact that currently most of the applications are submitted to the National Quality and Accreditation Assessment Agency, even in those regions with their own agency, **the Ministry will put in place a national strategy for quality university education, proposing folding into one agency those bodies in charge of assessment of degrees and certification of university faculty.**

Regarding the assessment of research activity and university level teaching staff, there are **two agencies within the Ministry of Education carrying out functions of research**: the National Quality and Accreditation Assessment Agency and the National Commission for Research Assessment (CNEAI). To sharpen the coordination of these agencies, **we propose that the latter, the National Commission for Research Assessment merge into the National Commission for Research Assessment, thus unifying the two assessment agencies at the head of these duties.**

Additionally, the State has been providing **four types of student aid for pre-doctoral training of university teachers** (aid for training, brief placements, aid for temporary transfer to foreign academic centres and funding to cover tuition for doctoral programmes).

Currently, Regional Governments also maintain their own programmes for university faculty training that are similar to these, as well as to those provided by the Ministry of Economy and Competition for research personnel training.

**With a view to efficiency and avoiding duplications, we propose joining the calls for entry of the State training sub-programme and the State programme for talent promotion and employability 2013-2016.** This measure will not reduce aid but rather have a simplification effect on the processing and will cut costs for the administration and citizens as it will mean one application instead of two or more, one evaluation, and so forth.

## Scholarships

The Ministry of Education, Culture and Sports has been signing collaboration agreements with the Regional Governments of Andalucía and Catalonia, establishing the bases on which the Ministry organises the corresponding scholarships on both university and non-university levels. The Regional Governments are in charge of the processing, decision-making, payment, inspection and resolutions of the challenges to these decisions that arise. The signing of said agreements delays the scholarship processing in detriment to the beneficiaries from these two regions.

In order to correct this unfavourable situation there is a plan to unify the processing of scholarships and study grants under one single administration, and thus the **Ministry of Education, Culture and Sports will take charge. Consequently, the agreements annually signed with Andalucía and Catalonia must be revised.**

## Distance learning

All Regional Governments, to some extent, have created their own distance learning platforms. Frequently these programmes reach beyond their regions since technology makes distance learning available nation-wide. It is precisely due to this absence of one concrete anchor for distance learning that leads to the proposal of grouping distance education in the **Centre for Distance Learning Innovation and Development.** Its mission will be to make education available to adults and schooling-age students who, for whatever circumstances, are not able to physically attend ordinary classroom teaching. Concentrating these platforms into one will mean more efficient use of available information resources.

## Public indexes and registries for universities, learning centres and degrees

With a view to correcting the inefficient functioning found in the different registries and indexes of universities, educational centres and degrees pertaining the State and Regional Governments, **the Ministry will make a study of these in order to eliminate those with similar content, facilitating compatibility and data exchange between them.** This will allow for the elimination of double entries in different indexes, making the file management system more agile.

## Pending transfer of pre-and and primary school religious education teachers to the Regional Governments of Andalucía, Aragón, Canary Islands and Cantabria.

Currently, the Ministry does not have its own religious educational services, with the exception of Ceuta and Melilla. Therefore, the department's central services cannot properly manage the teaching staff for

religious education in those Regional Governments that have not taken on these jurisdictions (Andalucía, Aragón, Canary Islands and Cantabria).

This exceptional situation affects the coordination of this body of teachers and leads to faulty monitoring in this domain, as well as other shortcomings that could be corrected by Regions assumption of this responsibility. To correct this, **the Ministry proposes that the four aforementioned Regional Governments take over the management of religious education teachers for pre-school and primary level education.**

## Culture

### Joint programming

The Ministry covers a broad survey of cultural activities and will examine the areas in which horizontal planning can be applied through the Sectoral Conferences. **A specific move to foster reading in homes and schools is under arrangement with the Regional Governments.**

### National Institute of Scenic Arts and Music (INAEM)

The economic downturn has forced local and regional entities to reduce their cultural programming. Decrease in public demand has caused significant reduction in the booking of theatre and circus performance groups, leading to the under-use of facilities, closed venues and technical installations not being used. To this end, the National Institute of Scenic arts and Music will table a number of proposals for programming of interest to city councils and **sign a cooperation protocol with the Federation of Municipalities and Provinces lining up a programme of events that will be available to those interested municipalities.**

Along these lines and in the interest of sharing resources and making packaged offers to public entities, given the reductions in their budgets of recent years, the **Ministry proposes the creation of a network for resource exchange among the major theatres, the Teatro de la Ópera and the Teatro de la Zarzuela in Spain.** All of these have their own repertory productions and many of them are in cities connected by high-speed train lines.

Additionally, there have been structural deficiencies regarding personnel in the national television RTVE Choir, the National Spanish Choir and Teatro de la Zarzuela Choir. To remedy this, **the national RTVE Choir will merge with these last two. This will also represent savings to these affected choirs, as well as an improvement on the musical quality.**

### Rationalisation of official state and regional cultural heritage bodies and integration of cultural interest registries

The proliferation of similar entities for the protection of regional cultural assets has made the management of these expensive and complex. There is also a multiplication of categories and figures for the protection of assets that is quite removed from the criteria applied by the State Qualifications Board, making it difficult for these regional entities to achieve the goals for which they were established.

To this end, the Ministry **will rationalise the list of official entities, both State and Regional, in order to strengthen both the Qualifications, Valuations and Export of Cultural Assets Board and the State Cultural Interest Assets Registry (BIC).**

### Bullfighting Registries

The norms regarding bullfighting registries are enshrined in Law 10/1991 of 4 April, on the administrative authority regarding bullfighting entertainment, enacted in the Bullfighting Statutes. In addition, three Regional Governments have created their own bullfighting registries: Andalucía, Basque Country and

Navarra. Another two Regional Governments have created registries of professionals in the field, but have not yet fully developed them.

To solve the shortcomings identified as a consequence of the myriad registries in this domain, and aligned with the provisions foreseen for the future Single Market Guarantee Act, there is a proposal to incorporate **a revision of bullfighting legislation within the National Plan for the Protection and Promotion of Bullfighting. This revision would eliminate the registration requirement in the regional bullfighting professional and breeder registries in order to perform in these Regions.**

## Sports

### School and university championships

Regarding the organisation of school and university-level championships, the State continues to exercise powers of organising university championships which could be done more efficiently in other ways, given the fact that regional entities participate in them. To this effect, we propose the creation of a **National Association of University Sport which would group together those participating universities and take charge of these events.**

### Single sports license

Currently there are various Spanish sports federations that use the system of the single sports license which allows athletes to compete in all State and Regional competitions. **This single license will be extended to all sporting federations.**

## G. MINISTRY OF EMPLOYMENT AND SOCIAL SECURITY

### Present situation

Section 149.1.7.<sup>a</sup> CE confers on the **State** the exclusive competence over “labour legislation, enforcement of it by the Regional Government bodies notwithstanding”. In terms of legislation, duplications do not exist, although at times regional legislatures rule on issues of State competence or approve instruments that reproduce those already adopted by the State (for example, Spanish Strategy and Social Security).

**Regional Governments, in their territorial domain,** enforce employment policy, support of employment and labour legislation with the programmes and measures devolved to them (Articles 3.2 and 17 of the Employment Act). The State reserves authority over passive employment policy (“management and control over unemployment benefits”), which must be coordinated with the active employment policies enforced by the Regional administration.

During its analysis of the situation, the Ministry of Employment and Social Security observed that there is faulty and inefficient functioning in the following domains: active and passive employment policy; occupational training; observatories; labour and Social Security inspection; integration of migrants; and work and residence permit processing.

## Proposals

### Active employment policies

The current distribution of powers, despite the fact that the regulations themselves lay down the necessary coordination instruments, suffers from certain malfunctioning, especially on the following issues:

- It is more complex to achieve planning, execution, follow up and assessment of the Active Employment Policy (PAE). The Active Employment Policy is based on a “grant system” which is to a great extent obsolete. The model makes it difficult to effectively coordinate between active and passive employment policies. Passive policies should offer necessary protection for the unemployed without compromising their commitment to work or discouraging their reinsertion into the labour market.
- The model makes it difficult for workers to move around freely since not every regional public employment service has direct, easy access to the employment offers existing in other regions, limiting its ability to make these connections. Currently there are seventeen regional and two national websites that post job offers. The two latter sites (“National Employment System” and “Meeting Point” on the Public Employment Service site) include all job offers.

**Three basic aspects must be tackled** in order to achieve more efficient management: assessment, coordination of the administrations and collaboration among not only the administrations but among these and the private sector.

Firstly, a **new system will be defined for the programming, follow-up and assessment of the Annual Employment Policy Plan** which will give structure to and simplify all the annual employment plans by way of common objectives established for the State and Regions.

Moreover, the **Employment Information Service to the Public (SISPE)** will be remodelled in order to improve follow-up and assessment of active labour market policies and the coordination of information. This will be done through expanding on the matters subject to information exchange, unification of digital platforms where these are managed and strengthening the institutional cooperation bodies.

Additionally, the launching of a **“one-stop employment portal”** is envisaged in Royal Decree Law 4/2013 of 22 February. This includes measures backing entrepreneurs, stimulating growth and creating employment. This portal will be a common data-base that encompasses all offers and demands for employment as well as training opportunities.

Regarding **private sector collaboration**, a specific domain will be delineated for those private recruitment agencies that qualify to collaborate with the public employment service. To facilitate this, **a framework agreement will be set up within the National Employment System**, under provisions of said Royal Decree Law 4/2013, between those recruitment agencies and public employment services that voluntarily decide to participate. The Regional Governments have responded favourably to participating in this public-private collaboration model, as seen in the Sectoral Conference of 11 April 2013).

### Passive employment policies

Problems have been detected in the filing for unemployment benefits when the applicant does not present the necessary inscription as an unemployed job-seeker that must be issued by the Public Employment Service in his respective region. **To this effect, coordination will be set up between the appointments systems of National Employment System, ADSPEA and the processes involved in registering as a job-seeker and applying for benefits.** This will guarantee that, all over the country, the application process for job-seeker status will take place before or at the same time that the applicant files for unemployment benefits.

### Benefits and non-contributory allowances

The State, Regional Governments, Provincial Administrations and Local Corporations all manage benefits and financial aid arising from situations of unemployment and lack of resources (income), and here, the possibility exists that one person could be receiving duplications in these benefits. In order to avoid this



circumstance, **those social benefits issued by the different administrations will be incorporated into the Public Social Benefits Registry and updated accordingly.**

## Job-oriented training

Law 5/2002 of 19 June, on Qualifications and Professional Training regulates an integral system of occupational training, qualifications and accreditation system within a National Qualifications and Occupational Training System framework.

To this end, the system includes training within the educational system as well as job training programmes that issue respective degrees in occupational training and certifications of professional status.

In completion of this model, a set of activities are undertaken both by education administrations and employment entities.

**The National Reforms Programme (PNR) for 2013 envisages a measure for improving employment quality and policy, a strategy for implementing dual vocational training. This will be done through the creation of a contract for training and apprenticeship.** Additionally, the following strategic directions have been established for 2013-2015:

- Implement a coordination and collaboration model among the administrations and public institutions involved in applying dual vocational training.
- Map-out and maintain a new guideline for vocational training that can be continuously updated.
- Draw up a strategic public awareness plan directed toward workers and business, especially SMEs and young people, to inform and guide them in this initiative.

## Observatories for employment, labour market and labour relations

Within the structure of the Ministry of Employment and Social Security and related entities, there are two observatories for the surveillance of the labour market and job training: the **Public Employment Service Occupations Observatory**, from the service unit called Statistics, and the **Job Training Observatory**, part of the Tripartite Foundation for Employment Training. Both Observatories operate in different spheres—the former focuses on the job market and the latter, on professional training— however, their activities converge in their common objective of seeking out the future needs of the labour market. In order to curb overlapping and duplications and allow for shared, more efficient use of the data bases and information sources, we propose merging the two observatories to form one **Public Employment Service Occupations Observatory**.

**On a regional level, we will present a proposal at the Sectoral Conference on Employment and Labour Affairs to eliminate their territorial observatories.** This move would be for effectiveness and efficiency purposes, as currently, in agreement with the Institute for Fiscal Studies, there are sixteen regional observatories, and through collaboration mechanisms to be developed, it will be determined which operations will be taken over by the State observatory. The necessary legislative or other types of regulation will be adopted to this end.

On a similar note, there is a State-level observatory for labour relations, the **Collective Bargaining Observatory**, which is in charge of matters of information, studies, documentation and dissemination of collective bargaining activities. There are also three regional observatories—in Castilla y León, Galicia and Balearic Islands— whose objectives can be reached through the State observatory. To this effect, we will present the proposal to the Regional Governments for the elimination of their regional observatories at the **Sectoral Conference on Employment and Labour Affairs**, with the transfer of their activities to the State Observatory.



## Immigration observatories

In matters of immigration, thirteen Regional Governments have created observatories that coexist with the State observatory and three university level observatories (University of Alicante, Jaime I University and the Standing Observatory on Immigration of the Province of Jaén). The need to improve efficiency of public resource utilisation and simplify administrative structures can be done through the elimination of those structures lacking in added value. It is also advisable to elaborate a comprehensive policy on immigration where competence concurs on all administrative levels and is relevant across national territory. For these reasons, we will propose at the next Sectoral Conference on Immigration that the **functions of these regional observatories be taken on by the State Observatory** with the respective savings this would represent in the annual budget allocated to them.

## Observatories on racism and xenophobia

**We propose that the functions of both the Madrid Observatory and the Extremadura Commission against Racism, Xenophobia and Intolerance** be taken over by the Secretariat General for Immigration and Emigration. This would mean a reduction in public expenditure and functional and administrative simplification.

## Labour and Social Security Inspections

It is the responsibility of the Labour and Social Security Inspection Unit to oversee matters of labour relations, prevention of occupational hazards, social security, employment and hiring of foreign nationals. In general, the **unity of the organisational structure** is maintained, that is, all inspecting staff from the Labour and Social Security Inspection Unit report to the General State Administration, with a double **functional reporting** (State Administration-Regional Governments) according to the jurisdictional matter being inspected. This scheme is considered to be the most effective and efficient since it reduces expenses and administrative cost to the interested parties.

**Catalonia and the Basque Country are the exceptions since they have two Labour and Social Security Inspectorate units working in their territories.** In 2010 and 2011 the transfer of human resources and material means were approved for undertaking public service inspection in Catalonia and the Basque Country, respectively. The personnel transferred now reports to the regional administrations. Specific co-operation mechanisms have been established for this: the Catalan Labour and Social Security Inspection Consortium (which in practice does not carry out this function) and the Basque Council for Labour and Social Security Inspection.

This situation has given rise to duplications and inefficient operations, inequitable workloads and even inequitable remuneration among civil service workers of the different administrations with a risk of functional as well as organisational ruptures in the system.

**A new law regulating labour and social security inspection will be approved, establishing a new organisational framework. It will give rise to bilateral and complementary actions with Regional Governments that have the public civil service of inspecting devolved to them.**

**The following concrete actions will be undertaken:**

- New legislative instruments: the redefinition of bilateral cooperation and collaboration instruments through structures integrated into the Labour and Social Security Inspectorate, uniform application of legislation on social issues, the devolution of inspection powers over national businesses to a special unit under the auspices of the Central Authority and control of the Central Authority over the Labour and Social Security Inspectorate for territorial and general target plans.

- Strengthening of the State inspectorate in Catalonia and the Basque Country: the creation of a delegation for the Special Directorate in Catalonia and the Basque Country and a renegotiation of the number of agents to be transferred.
- Establishment of a State labour authority with powers to decide on sanctions proposed by the Inspectorate on nation-wide companies.
- Establishment of the Higher State Inspectorate on labour affairs.

## Immigrant integration

The integration of immigrants has been organised concurrently by the three administrative levels with jurisdiction over the subject, either directly through health care and education or through grants for social and labour integration programme development for immigrants in Spanish society.

Nevertheless, the lack of a legal framework laying out a national policy, above and beyond the strategic plans created, has led to a coordination gap between the three administrations, a blurring of competence and even conflicts therein.

The Constitutional Court has at times considered that the integration of immigrants is only part of the social work system and cannot be placed under the domain of policy on immigration and aliens, exclusively State jurisdiction. Nevertheless, in its Decision of 31/2010 with regard to the Statute of Autonomy of Catalonia, it remarked that the set of powers and authorities —obviously dealing with social benefits issues— that Section 138.1 of the Statute of Autonomy confers upon the Generalitat, does not work against the exclusive competence that the State holds regarding immigration.

In this context we are seeing a **divergence of conditions granting access** to non-community foreigners to different services as well as requirements for remaining on national soil.

It is advisable, therefore, to frame these criteria and actions within a national integration policy with a view to better inclusion in the host society and not only within the framework of specific social benefits for this migrant population.

To this effect, **Organic Act 4/2000 of 11 January on the rights and freedoms of foreigners in Spain and their social integration will be amended in order to define common criteria on the integration of immigrants and determine the confines within each of the different public administrations will act.**

## Work and residence permits

The State has exclusive jurisdiction over immigration (Section 149.1.2. CE) and the Regional Governments, because of their competence in the enforcement of labour norms, can take on the granting of work permits. At present, only Catalonia exercises this power, which was conferred through Royal Decree 1463/2009 of 18 September.

Taking over the authority to grant work permits is derived of the regional jurisdiction over the implementation of labour legislation and could be taken on by all Regional Governments with no need to amend the statutes.

The current situation means there are two authorisations in one single administrative process:

- One of these falls under the exclusive jurisdiction of the State, who decides whether the foreigner lives in Spain by way of applying for said residence and work permit. Jurisdiction over residence is non-transferrable and has a direct bearing on the work permit.
- The other authorisation falls under the exclusive jurisdiction, in terms of enforcement, of the regional labour authority, who decides on granting the possibility to work, under the provisions of the authorisation to reside and work in Spain, granted through application.

Under this system there cannot be a comprehensive view of an admissions policy; it presents barriers to market unity and creates horizontal overlapping at State and Regional Government levels, for applicants must file in one region to undertake an enterprise in others; it places further burden on the system and makes it difficult to maintain uniform criteria for managing immigration issues across Spanish territory.

Alternatively, European Directive 2011/98/EU, to be enacted in national legislation by 25 December 2013, establishes one single procedure for allowing a single administrative process which will combine residence and work permits. Additionally, the obligation is established to designate a competent authority to receive applications and issue the permit, without prejudice to other authorities' functions of informing on the process. **For all of these reasons, regulations will be revised in this domain in order to implement a single permit and replace the regional work authorisation with a report from this regional labour authority.**

## H. MINISTRY OF INDUSTRY, ENERGY AND TOURISM

### Present situation

Regarding **industry and SMEs (Small and Medium Cap Enterprises)**, there is a convergence of general or horizontal jurisdictions between the State and Regional Governments which cover all actions relative to promoting and supporting SMEs. The State has competence in laying the bases and coordination of general economic planning (Section 149.1.13 CE) and the Regional Governments, that of fostering economic activity within the region within the objectives set by national economic policy (Section 148.1.13 CE).

Regarding **tourism**, there seems to be a clear division of jurisdictions between the State and Regional Governments. The exclusive competence of Regional Governments over tourism regulation and promotion in their territories (Section 149.1.18) converges with the general State competence to lay the basic rules and coordinate general economic planning (Section 149.1.13). All of the regions have taken on the full responsibility for regulation and promotion of tourism in their respective territories by virtue of the provisions of Section 148.1.18. of the Spanish Constitution.

Regarding **energy**, jurisdictions are shared between the State and Regional Governments. Section 149.1.25 of the Spanish Constitution confers powers on the State to determine the "basic regulation of energy and mining" but in truth, the sectoral regulations have formed a broad interpretation of what is "basic" in this domain, so that, in convergence with the general State competence over "basic rules and general economic planning" (Section 149.1.13 CE), this has meant that the State retain within its jurisdiction the fundamental core of legal, technical and economic regulation of the energy sector.

The different Statutes of Autonomy of the Self-governing Regions generally include competence over indicative planning in different subsectors, to be carried out in coordination with the State. Regional Governments have sweeping powers, not only in regulatory application of State legislation, but also in the implementation of it including authorisation, supervision and monitoring of the energy facilities and their activities on regional soil, particularly promoting special scheme renewable energies and energy efficiency throughout their regions.

Regarding **telecommunications**, Section 149.1.21 of the Spanish Constitution confers exclusive competence to the State over telecommunications, air and underwater cables and radio communications; and Section 149.1.13 of the Spanish Constitution confers competence to the State over "basic rules and general economic planning". The Regional Governments have competence over regulation and management of certain matters (environment, territory) that are indispensable to allow for the deployment of grids and provision of services.

During the situation analysis, the Ministry of Industry, Energy and Tourism pinpointed malfunctioning and inefficiency in the following domains: business start-up; tourism; energy; telecommunications; public funding for boosting R&D&I; e-commerce and issuers of certification services for e-signatures.

## Proposals

### Industry and small and mid-cap companies. Business start-up

The Ministry of Industry, Energy and Tourism has been drafting a set of sweeping policies focused on promoting entrepreneurial initiatives, supporting start-up businesses, injecting innovation into the business fabric, facilitating companies' access to financing and boosting entrepreneurial competitiveness to a higher level. On the one hand, this Department manages the Information Centre and Start-up Network (CIRCE) formed by an online processing system and a pool of offices called **Consulting and Process Initiation Points (PAIT)**. On the other hand, the Ministry of Finance and Public Administration, Directorate-General for Administrative Update, in collaboration with the Chambers of Commerce, has a network of **one-stop business service desks (VUE)**. These are offices that provide identical services as the PAIT, in fact, most of them operate as Consulting and Process Initiation Points. **According to the Support for Business and International Engagement Act both of these instruments merge, producing the Entrepreneur Service Point (PAE).**

In the regions, support policies for SMEs are generally outlined by regional entities related to regional development, innovation, technology and knowledge society development; and overlap with the more specific General State Administration initiatives in these areas cannot be ruled out.

There is also a range of information, consultancy and assistance services aimed at SMEs in the different Regional Governments and Local Entities.

Something similar occurs regarding financial aid and grants for SMEs, information on which is available at myriad services attached to different entities either reporting to or linked to public administrations. This gives way to a range of shortcomings such as an excessive scattering of information, lack of service listings of financial instruments or duplications in them, lack of complete and orderly information about what public administrations offer.

**Consequently, the Ministry will update the central data base of financial aid and grants for SMEs. This will contain all pertinent information and** will allow businesses simplified access to public administration financial aid information. This will be contained in a one-stop service point listing the entities that offer financial instruments, providing complete and updated information on them and unifying in one single hub all the financial aid and incentives available for SMEs. This is a measure that will improve relationships between the public administration and the business sector, giving the latter better attention and new financial instruments as well as access to statistical data.

**Additionally, what is currently the SME Observatory, an information and advisory board, will become the Spanish SME and Start-up Business Council.** This will be a more prominent body with greater institutional status that will be better equipped for responding to advisory, analysis and coordination enquiries.

### Tourism

Some Regional Governments have been engaging in operations that go above and beyond the strict regulation and promotion of tourism, entering into other jurisdictions. Some of these operations are even described in their regional Statutes. Regional Governments thus carry out tasks involving information, promotion and cooperation as well as the promotion and regulation of tourism in the strict sense. These operations take place through tourist promotion bureaus abroad.

**To this effect, the existing coordination mechanisms for tourism planning between the State and Regional Governments, specifically in the Sectoral Conference on Tourism, will be strengthened in order to boost cooperation in the respective tourism plans, all falling within the new joint planning instrument provided in Article 7 of the Public Administrations and Common Administrative Procedure Act.**

In the same sense, and with a view to improving the synergies and reinforcing administrative cooperation through a more intense sharing of resources, best practices and due rationalisation of organisations,

the **Ministry proposes that the tourism observatories of Catalonia, Valencia and Balearic Islands fold into Turespaña (Tourist Studies Institute). In these three cases, the data on tourism demand obtained from these observatories corresponds with that provided by Turespaña, under the collaboration agreements signed with the respective Regional Governments.**

## Energy

In terms of energy, we have identified over 40 agencies managing energy and operating in thirteen different Regional Governments, and on different levels (regional, provincial and local). These belong to an association denominated EnerAgen (Spanish Association of Energy Management Agencies). In some cases, these carry out activities that coincide with the Energy Diversification and Saving Institute, the sole national agency. This gives rise to problems such as the lack of coordinated action, duplication or scattering of actions that support renewable energy, energy saving and efficiency carried out by different administrations. **Consequently, the Ministry proposes the rationalisation of existing regional energy entities and the integration of those who duplicate the functions of the Energy Diversification and Saving Institute.** This measure will allow those Regional Governments with energy agencies to eliminate them and benefit from the savings on this in their annual budget.

## Telecommunications

There is no State-level plan for networks and infrastructures to provide these services in market conditions.

To this effect, new legislation, **the General Telecommunications Act, will be approved with diverse measures for effectively deploying telecom infrastructures such as: better coordination between the State and Regional Governments; the guarantee of rights to users across the board as well as effectiveness in monitoring the obligations imposed on service providers.**

**Moreover, coordination of the General State Administration to grant aid for deployment of broadband infrastructures, avoiding the duplication of the organisation of grants by Regional Governments**

**Lastly, human resources and materials will be made available by the General State Administration to the Regional Governments, to inspect technical aspects of audiovisual material under their jurisdictions. The Ministry of Industry, Energy and Tourism already has inspection units deployed in all provinces; this will prevent Regions from incurring in considerable expense of developing inspection services to evaluate those domains in which they have jurisdiction.**

**Rationalisation of Regional Government administrative infrastructure for telecommunications and information society.**

Some Regional Governments have made a broad interpretation of their organisational authority and have created telecommunications administration structures, which is the exclusive jurisdiction of the State. Therefore, **these regional administrative structures will be adapted, clarifying the existing regulatory framework and promoting market unity.**

There has also been a proliferation of regional telecom observatories that study and track telecommunications and information societies whose operations could be transferred to the National Telecommunications and Information Society Observatory (ONTSI). To this end, the **Ministry proposes that the ONTSI take over the functions of those regional observatories in these matters, with the resources necessary.**

## e-Commerce within Spain

e-Commerce is subject to diverse rules and the inspection and control of different State, regional and local authorities. The rules specifically applicable to e-commerce are contained in Law 34/2002 of 11



July regarding information society services (enacting Directive 2000/31/EC) and in the consolidated text of the General Consumer and Distance Contract User Defence Act. This legislation has a broader concept that includes, among other modalities, e-contracts.

While Spanish Law 34/2002 of 11 July is mainly enforceable by the State through the Ministry of Industry, Energy and Tourism, the power of oversight to ensure compliance contained in the consolidated text of the general Act for the defence of consumers and users corresponds to the three administrative levels. In this situation, online shops are subject to red tape complications, uncertainties and even dual sanctions, something which must be done away with.

To this end, the **Single Market Guarantee Act will enshrine, for all distance contracts, the “country of origin” principle established in Directive 2000/31/CE, on e-commerce**, in order to regulate the exercise of jurisdiction by Regional Governments in this field. This doesn't mean the State will absorb their powers, but rather, Regional Governments will exercise their powers through the service providers located in their territories, regardless of what region the end user resides in.

At the same time, **Law 34/2002 of 11 July will be amended to eliminate certain references to the rules and powers of Regional Governments** that have no place regarding the matters regulated in this legislation, where exclusive competence of the State prevails as appears in Section 149.1.21 of the Spanish Constitution. Concretely, those legal precepts will be amended that contain references to the regulatory powers of Regional Governments about information on prices, e-commerce, advertising and the powers to inspect and sanction.

## **Listings of certification service providers for e-signatures admitted by public administrations and associated administrative procedures.**

The State has exclusive competence to legislate and implement the regulation on e-signatures (Section 149.1.8., 18., 21. and 29. CE). On the other hand, European Commission Regulation 2009/767/CE establishes that each member State of the EU publish a “Trusted Server List” (TSL) containing a minimum of information about certification service providers that will issue electronic signature certificates to the public, who will be recognised and supervised in that State. In compliance with said Regulation, the Ministry of Industry, Energy and Tourism has elaborated a TSL of certification service providers who have been recognised, established and supervised in Spain. The aim of the creation of these lists is for trans-border recognition of e-signatures with different member States.

As a result of this exclusive State competence, none of the Regional Governments have passed regulations on e-signatures. However, with regard to the admission of them and their use in respective administrations or interactions with them, different territorial administrations have approved provisions that establish administrative procedures leading to the admission or rejection of applicant service providers. These provisions also include lists of admitted certification service providers for each of the aforementioned administrations.

Similarly, State public sector agencies such as the Tax Agency have put into practice analogous procedures for service admission and the elaboration of approved service providers. This absence of uniformity in the approval of certification service providers encumbers the system and providers must apply to each public administration to have their services included in each of the specific lists of trusted certification services.

The approval of the draft regulation on e-identification and trusted e-transaction services in the domestic market slated for the end of 2013 does not include extraneous conditions for admissible e-signatures and establishes that all member States should accept those certification service providers included in the TSLs. **Thus, the State, regional and local provisions for limitations on electronic certification are repealed, as well as the administrative procedures regulated through them.**



## I. MINISTRY OF AGRICULTURE, FOOD AND ENVIRONMENT

### Present situation

The State has exclusive competence over foreign trade (Section 149.1.10.<sup>a</sup> CE); external health measures (Section 149.1.16 CE); general-interest airports; control over air space, traffic and transport; meteorological services (Section 149.1.2. CE); and basic legislation regarding environmental protection without prejudice to the powers of the Regional Governments to establish additional protective measures. (Section 149.1.23. CE).

Regional Governments have jurisdiction over the following areas, among others: recreational airports and in general, those that do not engage in commercial activity (Section 148.1.6. CE); agriculture and livestock raising in accordance with general economic planning (Section 148.1.7. CE); woodlands and forestry (Section 148.1.8. CE); environmental management (Section 148.1.9. CE); inland water fishing, hunting and river fishing (Section 148.1.11. CE).

The Ministry of Agriculture, Food and Environment has pinpointed failures and inefficiencies in the following: meteorological agencies, environmental assessment, sanitary inspection of goods at border controls, hunting and fishing license recognition between Regional Governments and the equestrian health registration card.

### Proposals

#### State Meteorology Institute (AEMET)

AEMET has an extensive facilities network that covers national territory.

All of the Statutes of Autonomy with the exception of Galicia confer upon the Regional Governments competence over their own weather services. Some of these, such as Catalonia, Galicia and Basque Country, have their own service or entity (MeteoGalicia falls under the University of Salamanca). In these cases, the duplication of services is more evident since it involves overlapping human and technical resources. In some cases, forecast models are not uniform with those of the AEMET (i.e., Catalonia). Moreover, the Catalán and Galician services do not provide support service to air and space and defence agencies. The Basque service (EUSKALMET), neither provides these latter services nor weather services and focuses on spotting emergencies.

Other regions have a network of automatic meteorology stations that are laid out together with those of the State (in addition to the aforementioned: Andalucía, Canary Islands, Balearic Islands and Murcia).

Here we point out that some of the Regional Governments, even those with their own weather stations, outsource forecasting or maintenance services to private companies (Basque Country, Andalucía, La Rioja, Asturias, Castilla-La Mancha and Castilla y León), and that these, in turn, sub-contract certain services when necessary with the national weather agency, AEMET.

In short, we have discovered overlapping in meteorology services between the State and those Regional Governments who have developed their own services. For this reason, **we propose that the national weather agency AEMET provide the Regional Governments with the services that are currently redundant and allow them to eliminate their agencies.**

### Environmental assessment

It has been twenty five years since regulation on environmental impact assessment was approved, and today there are weak spots in these procedures that need to be corrected in order to guarantee better

coordination for those competent public administrations. In this domain there is a broad range of regional legislation with different procedures which leads to a lack of clarity in implementation.

In order to improve the coordination with Regional Governments on this matter, **environmental assessment norms will be amended with the main objective of identifying a concrete body to intervene in environmental projects that cross-cut different administrations.**

## Project for hunting and fishing license recognition across regions

Hunting and fishing licenses are specific to each region, leading to confusion and both financial and administrative cost excess. **The Ministry will endorse the implementation of a mutual recognitions system for hunting and fishing licenses between Regional Governments**, making it possible for citizens to hunt with a license issued by their region of residence in other regions by merely paying the corresponding fees.

## Equestrian health smart-card

This proposal consists in replacing the existing documents that must travel with horses. **This is a smart-card** that will preclude presenting an application, in person or otherwise, for transit. This will represent an improvement in equestrian passport and transit and simplification of these processes for citizens.

## J. MINISTRY OF THE PRESIDENCY (CABINET OFFICE)

### Present situation

The main functions of the Presidential Cabinet Office are the coordination of constitutionally relevant topics; the preparation, application and monitoring of the legislative programme; immediate support to the Presidency of the Government; assistance to the Council of Ministers, Government Representations Commissions, the General Commission of Secretaries and Under-secretaries; and especially, assistance to the Government in Parliamentary relations; inter-ministerial coordination; coordination of Government information policy, elaboration of determining criteria and organisation of information coverage of government activity, as well as issuing communications on behalf of the Government and its President and the recap of Council of Ministers activity; coordination of General State Administration information services in Spain and abroad, media relations; material support, economic-financial, budgetary, personnel management and in general all management of this type needed by the President of the Government (Prime Minister) and those bodies reporting to the Government Presidency.

Given the unique nature of these functions directly related to the Presidential Cabinet Office of the Nation, generally no duplications occur with those of Regional Governments, since although all of them have analogous structures, they operate exclusively on a regional level. Notwithstanding, the Ministry has a series of proposals with regard to opinion polls and socio-political views as well as the allocation of funding for activities related to victims of the Spanish civil war and the Franco regime.

### Proposals

#### Opinion and socio-political views surveys

A scientific study of the Spanish context, conducted through opinion polls and surveys on socio-political views is underway on the state level at the Sociology Research Centre (CIS). This activity is mainly established under the Constitutional provisions on competence of Section 149.1.15, regarding sociological

scientific research of Spanish public opinion and partially through Section 149.1.31, regarding statistics for reasons of State.

The CIS carries out surveys on a national and occasionally regional level. Regional Governments have created organisations (Catalonia), foundations (Andalucía) or services or units to these same ends, carrying out their own surveys that are often comparable to those of the CIS, especially regarding elections, social conditions and living standards. This brings about a redundant structure that can be put to better use. **The Spanish Sociology Research Centre could thus assume the tasks carried out by these regional bodies with a minimum allocation of resources. This will allow those Regional Governments with this type of organisation to eliminate them and save substantially in their annual budget.**

### **Call for proposals for funding for projects related to victims of the Spanish Civil War and Franco regime.**

This competence was conferred, de facto, to the Under-Secretariat of the Presidential Office as the extension of support duties for what was formerly the Inter-ministerial Commission devoted to the case study of victims of the Spanish Civil War and Franco regime. Formerly, the Minister of the Presidency and First Vice President of the Government headed this body. Since the approval of the Historical Memory Act (Law 52/2007, of 26 December), the General State Administration has only one generic mandate to establish grants earmarked for these expenses. These grants are destined to cover expenses arising from the location and identification by private individuals of victims as stated in Article 11 of said Act. There is no legal conferral of this competence to any ministerial body or department. However, to date, six editions of these grants have been celebrated (from 2006 to 2011) by the Presidential Cabinet Office.

Alternatively, the promotion and coordination of activities involving Historical Memory have been carried out for some time by the Ministry of Justice within the Rights of Pardon and other Rights Division which reports to the Under-secretariat. The most recent Royal Decree on the structural organisation of the Ministry of Justice confers the competence of the former support office for victims of war and the dictatorship (which was created by Council of Ministers Decision of 19 December 2008) to this Under-Secretariat. These powers consist in the coordination of duties of the rest of the Ministerial departments; the integration, update and communication of their information; the undertaking and implementation of Act 52/2007; information and assistance to interested parties; and taking before the Under-Secretary the celebration of conventions for establishing grants to pay for expenses incurred in locating and identifying victims, that is, carrying out duties of mediation, coordination, and promotion.

**Organising State grants remains as one of the residual powers of the Presidential Cabinet Office, aside from the set of related duties carried out by the Ministry of Justice, and thus this department will be the last one competent in the matter.**

## *K. MINISTRY OF ECONOMY AND COMPETITIVENESS*

### **Present situation**

In general, the State has exclusive competence over the basic organisation and economic planning (Section 149.1.13. CE) and the Regional Governments can assume competence over “promoting economic development within the objectives outlined in national economic policy” (Section 148.1.13. CE).

The State also retains the following exclusive powers: “Statistics for State purposes” (Section 149.1.31.); monetary system: foreign currency, exchange and convertibility; bases for the regulations concerning credit, banking and insurance” (Section 149.1.11.); and “basic rules of the legal system of public administrations” (Section 149.1.18.).

In its analysis of the situation, the Ministry of Economy and Competition has found failings and shortcomings in the following areas: defence of competition, statistical institutes, regional observatories in the sectoral areas of the Ministry and R&D&I.

## Proposals

### System for the defence of competitiveness

At State level, market competition defence policy is established in Law 15/2007 of 3 July, for the Defence of Competition and Law 1/2002 of 21 on the coordination of State and Regional powers over matters of defence of competitiveness<sup>2</sup>.

Pursuant to Article One of the Coordination Act, the State will exercise the jurisdictions recognised in the regulations regarding the defence of competition in terms of undertakings that involve modification or possible modification of free competition across regions or on a national market level. Alternatively, it is incumbent upon Regional Governments to implement the competence attributed to them regarding undertakings related to behaviour that, without affecting a broader scope than the regional, modify or could modify free competition within their respective region.

From 2001, nearly all of the Regional Governments have enacted rules through which they confer recognised competence and organise those departments to carry out the functions envisaged under them.

Initially, the chosen model was the **dual model**. This is a service for the defence of competition folded into the competent council for internal commerce, assuming the functions of research and investigation of procedures. To issue decisions, there is a tribunal on a regional level or the National Competition Commission in this competence. However, some Regional Governments have chosen to adopt the **sole authority model**, although this be with the internal division of both functions. In 2011, Castilla-La Mancha eliminated these bodies previously created for these matters, and the National Commission on Competitiveness assumed functions of investigation and decree. The Region of Madrid eliminated the tribunal itself; leaving the Council to take on the functions of investigating and the Commission to issue decisions.

Consequently, the Regional Governments follow one of the following organisational models:

- Dual Model: Aragón, Castilla y León, Extremadura and Comunidad Valenciana (these have a competition defence tribunal to issue decisions) and Canary Islands, Madrid and Murcia (in these regions, it is the National Competition Commission who undertakes to issue decisions).
- Sole Authority Model: Andalucía, Catalonia, Galicia, Basque Country.
- The National Competition Commission: Regional Governments of Asturias, Balearic Islands, Castilla-La Mancha, Cantabria, La Rioja and Navarra do not have regional bodies or services for the defence of competition and thus the duties of investigation and decision-making in undertakings regarding their territories will be carried out by the State through the National Commission.

Law 3/2013 of 4 June has recently been published, establishing the National Markets and Competition Commission which will group together the duties of the National Energy Commission, the Telecommunications Markets Commission, the National Competition Commission, the Railways Regulatory Commission, the National Postal Commission, the Airports Economic Regulatory Commission and the State Council of

<sup>2</sup> The Coordination Act is the result of the Spanish Constitutional Court decision of 11 November 1999, which ruled that the Regions whose Statutes include executive competence regarding "internal commerce" would then have the competence of the defence of competition since this competence must harmonise with the need to protect market unity of the national economy. The decision also considered that not only the formation but all executive activities that configure the real make up of the nationwide single market should be conferred upon the State.

Audio-visual Media. The functions of regulatory supervision and defence of competition become part of a single institution; those administrative duties —previously undertaken by regulatory bodies— which do not require special independent action will be transferred to the respective Ministries.

Alternatively, the Ministry of Economy and Competition will push for the signing of **collaboration agreements with the Regional Governments establishing that the CNMC will assume the defence of competition in its entirety, at least those of the decision-making phase of sanctioning procedures. This will pave the way for the elimination of other bodies with the corresponding savings in budget, without prejudice to prevention, inspection and sanctioning in the sector.**

### Statistics institutions

The decentralisation of statistical services creates problems due to the existence of information of diverse nature. The National Statistics Institute is committed to providing reliable data on economic and social matters. Data provided by different institutes can give rise to concern about the rigour of this information and thus affect the credibility of our country's circumstances.

Similarly, the information the INE is responsible for is compiled by other State public bodies (Ministries, Spanish Central Bank and the General Judiciary Council), which means **duplications even on a State level. Therefore, we propose broadening coordination processes through the application of comprehensive sampling in those areas where INE and regional research overlap: health surveys, information and communications technology at home and work. Together with this, centralisation and elimination of overlapping will be applied to the General State Administration surveys in tasks ranging from gathering, processing, and publishing information.**

### Foreign trade

Here, aligned with the horizontal organisation of integrating Regional Government offices abroad, the Ministry of Economy will push for **coordination between the Spanish Institute of Foreign Trade with Regional Government promotion entities abroad to boost the international projection of their activities.** Mechanisms will be established to enhance rationalisation and effectiveness of operations while preventing duplication.

### Exterior actions with State resources

At a State administration level, foreign activity will be coordinated with the State's own resources in order to save on international projection expenditure, boost effectiveness and efficiency in its operations and strengthen Spain's image abroad. To this effect, **a joint plan will be formulated for securing international contracts and a coordination commission created in which the following organisations will participate: Spain Foreign Expansion, Engineering for Economy and Transport (INECO), Engineering Systems for the Defence of Spain (ISDEFE), Agrarian Transformation (TRAGSA) and Foundation for International and Latin American Administration and Public Policy (FIIAPP)**

### Regional observatories in the sectoral areas of the Ministry

Regarding the gathering and delivery of information by regional observatories, we have found duplications in the following subjects: economics, pricing, markets, logistics, entrepreneurship, trade, internationalisation, innovation, science and technology. Following analysis of regional observatories and the most efficient ways to provide services today, we conclude that some of these are hardly active while others provide information already obtained by other Ministerial units. **To this end, we recommend the ration-**



alisation of regional systems that coincide with surveillance bodies in sectoral areas of the Ministry of Economy and Competition, concretely: Prices and Markets Observatory of Andalucía; The Aragon Observatory of Research and Innovation; the Canary Islands Observatory of Urban Social and Economic Issues; Regional Castilla-La Mancha Observatory on Markets, Castilla y León Observatory on Entrepreneurship; Logistics Observatory of Catalonia; Water Pricing Observatory of Catalonia; Business and Employment Observatory of Catalonia; Galicia Science and Technology Observatory; la Rioja Observatory for Innovation and Regional Observatory for Internationalisation; Madrid Economics Observatory; Navarra Agricultural Pricing Observatory and the Basque Science and Technology Observatory.

## Research, development and innovation

The State has exclusive competence over “general promotion and coordination of scientific and technical research” (Section 149.1.15. CE) and the Regional Governments have assumed the competence over promotion of research in coordination with the State, by virtue of Section 148.1.17. CE and their Statutes of Autonomy.

Within the framework of Law 14/2011 of 1 June, on Science, Technology and Innovation, both the General State Administration and the Regional Governments draft similar policies and programmes to boost R&D&I.

The recent approval of the Spanish Research and Development and Innovation Strategy 2013-2020 gave way to the 2013-2016 State Plan. Regional Governments have created new regional strategies for smart expertise within the regional coherence policy framework for the new programming period 2014-2020. All of these measures will consolidate human and financial resources allocated to R&D&I in a few scientific and technical domains<sup>3</sup>.

In this regard, there are two mandates under the Science, Technology and Innovation Act that refer to the creation of a **State Research Agency** and the reorganisation of the **General State Administration public research bodies, listed among the** Institutional Sub-Commission administration measures.

## L. MINISTRY OF HEALTH, SOCIAL SERVICES AND EQUALITY

### Present situation

In general, the State has exclusive jurisdiction over “External health measures. Basic conditions and general coordination of health matters. Legislation on pharmaceutical products” (Section 149.1.16 CE) and the Regional Governments assume competence in “Health and hygiene” (Section 148.1.21 CE).

All of the Regional Governments have exclusive jurisdiction over social assistance (Section 148.1.20), social services, social inclusion, protection and fostering of families and childhood, promotion of social volunteering services, cooperation with NGOs and assistance for persons in situations of vulnerability or social conflict. All of this without prejudice to those powers conferred upon the State under Sections 39 CE (protection of the family and childhood), 149.1.1 CE (equality for all Spaniards) and 149.1.3 (international relations).

Following analysis of the situation, the Ministry revealed malfunctioning and inefficiency in the following areas: joint planning regarding gender violence, Institute of Seniors and Social Services, international vaccination centres, health service authorisation for occupational risk prevention, assessment agencies for National Health System technology and services, observatories in sectoral areas of the Ministry and official public bodies.

<sup>3</sup> The Regional Governments’ new regional strategies for smart expertise within the regional cohesion policy framework for the new programming period 2014-2020 have not yet been presented.



## Proposals

### Joint planning regarding gender violence policy

Competence concerning the fight against gender violence and other types of violence against women is distributed across different territorial levels (State, regional and local) and institutional levels, making it necessary to **implement joint planning and action mechanisms and make resources and services available online.**

Joint planning in this domain will pave the way for better definition of the functions and work methods of the different units and resources that are deployed in situations of gender violence. Special emphasis is placed on the Victim Assistance Offices (competence of the Ministry of Justice) and on strengthening the coordination instruments within the General State Administration through the approval of a new mandate regulating the functions of the units with better clarity and rationalisation. All of these measures fall under the 2013-2016 national strategy framework for the eradication of violence against women.

To this same end, in giving personal attention to victims of gender violence, a consensus has been reached with the Regional Governments **on a common proposal to encompass institutional coordination, identifying all regional administrations involved in gender violence situations; map out the resources and services available to help victims —this will help identify duplications and possible scarcity; engineer individualised action plans; establish shared information systems and lastly, move toward achieving regional one-stop service units.**

**CORA proposes that the entire process involving gender violence be taken over by the Inter-ministerial Commission for Equality to maximise the existing structures and enhance coordination among different ministerial departments involved in equality between men and women.**

### International Vaccination Centres (CVI)

The General State Administration has 29 of its own International Vaccination Centres (that only administer four vaccines). There are another 47 centres that depend on the Regional Governments, with managing authority and eight others with temporary authorisations that have all vaccines included in the systematic schedule and anti-malaria protection, better assisting travellers. **We propose conferring upon those Regional Governments that request it the functions of international vaccination in their territory through management mandates.** This will expedite this service for citizens, expanding the number of international vaccine centres with this service available and prevent delays during peak seasons, namely summer.

### Assessment agencies for National Health System technology and services (SNS)

Health councils of certain Regional Governments have created public bodies dealing with drug information that operate in their respective territories with identical functions as those of the State. They also have health technology assessment agencies (AETS). Although they have a limited scope of activity for drugs, they do draft technical assessment reports. There are drug agencies in both the Carlos III Health Institute (National) and in the Regional Governments of Madrid, Catalonia, Canary Islands, Galicia, Andalucía and Basque Country.

**CORA proposes providing the necessary regulation to confer the functions of assessment on the Council of Spanish Network of Technology and Service Assessment. Common use would be made of the existing facilities in a more efficient manner while ensuring the necessary transparency and equity in health technology assessment processes.**

### Health service authorisation for prevention of occupational risk

The General State Administration certifies occupational risk prevention services for companies, but the corresponding work-related health services should be authorised by the Regional Governments. The

existence of different criteria and rules across regions produces **malfunctioning in the certification of prevention services, and even cases of demand for higher requisites than the State. For these reasons, we push for the unification of criteria regarding certification of these services and the authorisation of work-related health services through the incorporation of a regulation in this regard within the draft Single Market Guarantee Act.**

## IMSERSO – Institute for Seniors and Social Services

The powers of the Institute for Seniors and Social Services (IMSERSO) are devolved to the Regional Governments based on the provisions of Section 148.1.20 of the Spanish Constitution and in their Statutes of Autonomy.

The IMSERSO has competence over social services when it regulates basic conditions of rights and duties of citizens across the territory, pursuant to Section 149.1.1 CE, (situations of dependency, State Referral Centres, disability assessment, integration services for disabled persons) or when it assumes competence in Social Security matters, pursuant to Section 41 (non-contributory pensions, tourism, social thermal therapy).

**We propose the delegation of competence to the region-cities of Ceuta and Melilla for basic social services: home assistance, distance assistance, grants and situations of dependence.** In this manner the State will remain at the head of these duties but citizens will enjoy an improvement in their social services and access to them since they will be managed locally. A one-stop service will be implemented for this.

Moreover, to enhance efficiency in tourism and social thermal therapy programmes created by the State and Regional Governments, **we will propose that Regional Governments join the IMSERSO tourism and social thermal therapy programmes to extend the places available in certain destinations and increase the number of beneficiaries that correspond to each region.**

In order to guarantee effective equality of access to services managed by different public administrations, **IMSERSO will take on national reference status for social service assessment. This measure will translate into numerous improvements such as the production of an annual report of social policy and programme assessment all over the territory, following common criteria to guarantee the quality of service nation-wide, as well as establishing guideline indicators across the board.**

With regard to situations of dependence, **the Ministry will determine the cost to the region of the system for autonomy and aid in situations of dependency and its beneficiaries, for financing purposes. Some guideline indicators will be established to this end, which will determine said costs and eliminate possible situations of duplicate financing.**

## Observatories for childhood, youth, health and equality

Within the jurisdictional area of the Ministry of Health there are myriad entities that coordinate on a ministerial level with the Regional Governments and active associations as well as numerous observatories that are regulated according to their specific statutes.

The Ministry is also carrying out a rationalisation study of all the coordination bodies such as observatories on issues of health, equality, youth and family, childhood and disabilities in order to propose possible unification or elimination. At any rate, CORA believes it is necessary to **merge the observatories of the National Health System, women's health, health and climate change and the observatory for the prevention of smoking into one body denominated "the National Health System Common Observatory".**

**With regard to the observatories for childhood, we propose that the Regional Governments integrate their observatories in the case of Andalucía, Asturias, Cantabria, Catalonia, Galicia and Basque Country. Their functions will be taken over by the Public Observatory of Childhood under the aegis of the Directorate General of Family and Childhood Services.**

Regarding observatories on youth issues, we propose the elimination of those belonging to the Regional Governments of Aragón, Canary Islands, Castilla y León, Catalonia, Galicia, Balearic Islands, La Rioja, Murcia, Navarra and Basque Country, since the National INJUVE observatory carries out similar studies on a national level.

#### Official public bodies

In alignment with the principles of austerity and rationalisation of structures and enhanced effective service to citizens, **we move to eliminate the Board of Governors of the Women's Institute to simplify the administrative organisation of this body.** Organic Act 3/2007, created the Inter-ministerial Commission on Equality between Women and Men, which is already taking on the coordination duties of the Board of Governors.

Additionally, **we propose the elimination of the inter-ministerial commission in charge of studying budgetary issues for National Health System financial stability and considerable economic implications** since this overlaps with the functions of the Ministry of Finance and Public Administration, the Regional Governments Council for Fiscal and Financial Policy, The Government Representation for Economic Affairs and the Inter-ministerial Commission on Drug Prices.



# Sub-commission for Administrative simplification





## V. SUB-COMMISSION FOR ADMINISTRATIVE SIMPLIFICATION

### 1. INTRODUCTION. OVERVIEW OF THE PRESENT SITUATION

#### A. CONCEPT OF ADMINISTRATIVE SIMPLIFICATION

The aim of administrative simplification is to identify, measure and reduce bureaucratic costs and constraints. According to the OECD International Standard Cost Model Manual, “administrative costs” are those incurred by companies, the not for profit sector, public authorities and individuals in meeting their legal obligations to provide information on their actions or output, whether to public authorities or to private entities. The term “information” is to be interpreted in the broadest possible sense.

The information to be provided can be of two types: a) that which is compiled even when not so required by law; b) that which would not be compiled in the absence of a legal obligation to do so. The costs associated with the latter are known as the “administrative burden”.

Some administrative burdens are necessary, when they are required by the general interest or to help achieve the objectives of legislation, for example when information must be provided to ensure market transparency. But there are also many cases where it is possible to rationalise and reduce these loads without prejudice to general interests or the fundamental aims of legislation.

#### B. ADMINISTRATIVE SIMPLIFICATION IN SPAIN 2005-2011

The aim of this Government, and of the EU in general, is to simplify its administration and to reduce red tape. In November 2006, the European Commission as part of its strategy for growth and employment and within the “Better Regulation” initiative, proposed an ambitious action programme to reduce the administrative burden imposed by the EU regulations currently in force. Various financial organisations and international studies have calculated this burden as equivalent to about 3.5% of the GDP in the EU.

In the framework of this action programme, the Commission proposed that **the European Council of spring 2007 should aim to reduce this burden by 25%**, to be achieved jointly by the EU and the Member States by 2012. The Spanish Government **committed itself to obtain a reduction of 30%**, which in terms of Spanish GDP would represent savings for citizens and businesses of 15 billion euros by 2012.

To achieve this goal, various administrative simplification measures were taken, constituting three basic areas of action:

- The **promotion of e-Government and the replacement of traditional administrative channels by electronic means**, with the adoption of specific legislation for this purpose: Act 11/2007, of 22 June, on electronic access to public services, together with the necessary implementing regulations.
- The implementation of a **systematic plan for reducing red tape**, based in turn on:
  - Evaluation by all General State Administration departments and agencies of their procedures, to create and present proposals for simplification, which would be compiled and implemented by the Council of Ministers, in successive decisions. From 2007 to 2011, six such decisions were taken, together with one concerning the simplification of documentation.
  - The implementation of an on-going procedure to detect redundant or ineffective administrative burdens, at all levels of government, by means of cooperation agreements between the General State Administration and the autonomous regions, and between the General State Administration and the private sector (Spanish Confederation of Business Organisations, Spanish Confederation of SMEs and the High Council of Chambers of Commerce). Within the General State Administration, the administrative burdens detected were compiled and considered by the Council of Ministers as described above.



- Implementation of impact analysis procedures in the draft regulations by the Government and the departments of the General State Administration. This measure came into effect with the adoption of Royal Decree 1083/2009, of 3 July, which regulates the impact analysis of legislation, and includes a Methodological Guide.

The savings produced for businesses and citizens by these measures, taking into account the target committed to, were measured using the **Simplified Method for Measuring and Reducing Administrative Burdens** (see Annex V, Methodological Guide, in Royal Decree 1083/2009). This method was validated by a consultancy report and by the above-mentioned private sector bodies, and was adopted by consensus between the General State Administration and the autonomous regions.

This Simplified Method is based on the EU Net Administrative Cost Model, contained in the Commission Communication “Better Regulation for Growth and Jobs”, which was adopted on 16 March 2005. This, in turn, was inspired by the OECD International Standard Cost Model. The Simplified Method catalogues the actions of companies and individuals in their relations with government —presenting applications, filing certified copies, etc.— and diverse means by which administrative processes can be simplified, such as the automatic renewal of permits and licences and quicker response times, and these actions are costed. For example, presenting an application in person produces a cost of 80 euros for businesses and individuals, while the electronic submission of the same application costs only five euros. The savings, for the person concerned and for the administration, are self-evident.

By multiplying the unit saving in each case by the total number of procedures or activities affected by the simplification process, the overall savings can be calculated. **The Simplified Method has been applied to evaluate the different simplification measures adopted since 2007 in order to comply with the EU target.** The results achieved, up to the end of 2011, represented a saving for individuals and businesses of **less than 10 billion euros**, far from the goal of 15 billion euros by the end of 2012.

### C. EVALUATION

While the implementation of an action programme to reduce administrative burdens must be considered a positive step, **our evaluation of the results achieved to date is negative**, for the following reasons:

- **Difficulties in achieving the EU target**

The reduction in administrative burdens produced by the measures implemented in late 2011 was less than ten billion euros, **which made it very difficult to achieve the Government’s target for 2012.**

Moreover, **no effort was made to extend the measurement of savings** to areas other than those affected by the Government’s decisions, **nor were appropriate computing resources developed or used.**

- **Lack of coordination between administrative simplification and the expansion of e-government**

An important regulatory advance was made with the Electronic Access to Public Services Act, and various e-government services and infrastructures were launched, such as the Public Administration Networks and Applications System (SARA), the @FIRMA electronic signature platform, the Electronic Portal to the 060 Citizens’ Attention Network, the Electronic Platform for Data Mediation and the Electronic Register of Powers of Attorney. Nevertheless, and especially with respect to scheduling and planning, **there has been a failure to integrate these e-government tools with the measures adopted in the area of administrative simplification.**

Thus, in practice the absence of a global vision has limited the use of e-government as an instrument of administrative simplification and a means of shaping the two policy areas as separate realities, although quite obviously ICTs and their use by government administrations are the most effective tool available for simplifying procedures. Moreover, they could be used to redesign the entire procedural system.

Clearly, many of the simplification and burden-reducing measures adopted were based on the use of ICTs and on replacing conventional channels of management with electronic methods, **but these took the form of specific proposals, to be applied according to a vertical or departmental outlook, and were not integrated into a horizontal standpoint, encompassing all levels and areas of government administration.**

- **Limited view of administrative simplification.**

Finally, the process of administrative simplification carried out before 2012 must be considered unsatisfactory due to **its excessively “bureaucratic” orientation**. The scope of this process was limited to the area of government administration and current administrative legislation; it was intended merely to reduce or simplify the bureaucratic obstacles detected within the classical administrative structures and flowcharts, without taking into account the possibilities offered by ICTs or actually re-engineering or redesigning the structures and processes.

Furthermore, despite the existence of contacts and collaboration with the private business sector, and the fact that the whole process was formally oriented toward revitalising the economy and increasing business productivity, the burden-reduction measures that were actually put into practice did not achieve their full potential to achieve greater flexibility and to replace outdated legislation in this field.

#### D. MEASURES ADOPTED IN 2012 AND THE NEED FOR FURTHER SIMPLIFICATION TARGETS

- **European burden-reduction goals**

By the deadline of 31 December 2012, **government administrations in Spain had reached the target of reducing administrative burdens by 30%, having enabled individuals and companies to save over 18 billion euros** through the elimination or reduction of administrative burdens. The fact that **before 2012 less than ten billion euros had been saved** reflects the great effort made in this respect during the first year of the present legislature.

**The savings measurement process has been intensified and improved.** Previously, the measurement performed addressed little more than the reduction measures provided in the Government decisions, ignoring the statistics on the use of electronic services supplied by the different e-government Observatories, the studies published by the Council for Electronic Administration and the **impact analyses concerning the reduction of administrative burdens** achieved by General State Administration regulatory projects. During 2012, various studies were conducted in this field, thus providing a better overall measurement of the situation. Furthermore, **improvements were made to the computing instruments** used for measuring the savings achieved.

- **Integration with e-government**

The following structural changes have been made. The Ministry of Territorial Policy and Public Administration has been replaced by the Ministry of Finance and Public Administration. In the new organisational structure of the Secretariat of State for Public Administration, under Royal Decree

256/2012, of 27 January, determining the basic organisational structure of this Ministry, the former DG for Organisation and Procedures and the DG for the Promotion of e-Government (within the former Secretariat of State for the Civil Service) are consolidated into a single body, the DG for Administrative Modernisation, Procedures and the Promotion of e-Government.

This organisational change **has overcome the breach between the General State Administration actions on procedures and on e-government**, and enables a strategic reorientation of the administrative simplification process toward complete integration with the principles and techniques of e-government.

This reorientation represents a new, more realistic approach to administrative simplification, making it possible **to identify new mechanisms or procedures for cutting red tape through the use of electronic platforms** (Record Exchange System, Secure Electronic Notification, Electronic Platform for Data Intermediation, General Entry Point for Electronic Invoices, etc.). These are suitable for all levels of government and enable further progress toward the **integration of legislation on electronic intermediation with that on the common administrative procedure**.

- **Overcoming the bureaucratic approach and connecting up with economic policy**

As part of the government's economic policy, aimed at boosting the economy, creating jobs and promoting competitiveness, various policy initiatives were taken during 2012 and early 2013 that had a significant impact on the reduction of administrative burdens. The first of these was **the adoption of Act 12/2012, of 26 December, on urgent measures to liberalise trade and certain services. This legislation eliminated the requirement for a prior municipal licence or authorisation** to open commercial establishments (and other types, detailed in the text) with an area of less than 300 square metres. This threshold is expected to be raised in the forthcoming Business and Internationalisation Support Bill.

**This greater flexibility also includes the building and other work needed for new business premises, when a full-scale works project is not required.** Thus, businesses can begin building-reform work and the installation of fixtures and fittings, and also initiate commercial activity, with the only formality required being the filing of a sworn statement or communication to the effect that current legislation has been complied with and that the documents legally required are indeed held.

The future Market Unity Guarantee Act will validate business licenses for use throughout the country, thus simplifying and streamlining procedures and reducing bureaucratic obstacles. The forthcoming Business and Internationalisation Support Bill will also flexibilise administrative procedures concerning the creation, liquidation or transfer of companies. Also, for the first time in Spain, a "one-in-one-out" clause will be implemented, such that each new administrative burden that is introduced must be offset by the removal of at least one other, of equivalent cost. Finally, various measures will be introduced to reduce burdens concerning national statistical services and the prevention of occupational risks, among others.

These regulatory initiatives, by eliminating the need for governmental authorisations and simplifying procedures that affect a substantial number of businesses, will make a major contribution to reducing bureaucratic obstacles in Spain, and, what is even more important, pave the way for new goals and areas for action in the field of administrative simplification.

- **New public service policy**

A further result of the new organisational structure of the Secretariat of State for Public Administration, and of the consequent creation of the DG for Administrative Modernisation, Procedures and

the Promotion of e-Government, **has been the integration into a single department of competences for bureaucratic simplification and the reduction of administrative burdens, as well as for public service (the O60 Network).**

This has made it possible to better coordinate these policies and areas of action, and has highlighted the existence of a **new context for administrative simplification**. Thus, the techniques and tools of this simplification (the elimination of bureaucratic requirements, the unification of entry points, the use of e-government) can be focused on the public, both in general and on groups with special demands or needs.

## 2. WORKING METHOD

The **Sub-Commission for Administrative Simplification (SCAS)** approved a work method consistent with that adopted for the activities of the CORA, consisting of the following steps.

### A. *REVIEW OF INFORMATION ON ALL ADMINISTRATIVE SIMPLIFICATION PROJECTS, PROGRAMMES AND ACTIONS, EITHER IMPLEMENTED OR IN IMPLEMENTATION, IN ALL DEPARTMENTS OF THE GENERAL STATE ADMINISTRATION*

This phase was scheduled to be completed by **1 January 2013**. To meet this target, **the SCAS decided to address the General State Administration departments and agencies directly**, sending them a standard form to be completed with respect to each administrative simplification project planned to be implemented in the short-to-medium term or already being applied.

This approach was agreed upon unanimously by the SCAS after considering possible alternatives, **especially the use of the databanks contained in the Administrative Information System (SIA), developed by the DG for Administrative Modernisation, Procedures and the Promotion of e-Government, and in SIENA (the system for the identification and evaluation of regulations affected by Services Directive No. 123/2006/EC of the European Parliament and of the Council of 12 December 2006)**, established by the Ministry of Economy and Competitiveness.

There were two main reasons for taking this decision: a) the volume and complexity of the information contained in the two databanks (SIA alone contains data on over 2,000 administrative procedures and services), which would make it cumbersome to obtain useful data within the time limits set by the CORA; and b) the advisability of working with 'ready-made' simplification projects, already assessed by ministry experts, to ensure maximum impact on individuals and companies and to achieve real increases in competitiveness, wealth creation and economic growth.

### B. *ANALYSIS AND EVALUATION OF SIMPLIFICATION PROJECTS*

This phase was scheduled to be completed by **15 April 2013**. The following methodology was adopted to evaluate the projects:

- Complement the information given in the standard form with a series of **interviews with spokespersons appointed by the Sub-Secretariats of each department or agency, and with questionnaires to be completed by those in direct charge of the projects**, in each department or agency. These interviews and surveys were based on the **analysis of administrative burdens carried out in accordance with the Methodological Guide set out in Royal Decree 1083/2009**, on the analysis of regulatory impact.
- Analyse the **suggestions received from the public** in the CORA mailbox.
- Classify the projects into **three categories, A, B and C, by descending order of importance and based on the following factors, assessed as a whole:**

- Their **degree of “horizontality”**, without forgetting that all of them, except those of the DG for Administrative Modernisation, Procedures and the Promotion of e-Government, which has cross-cutting jurisdiction, are essentially ‘vertical’ projects, i.e., specific to the department in question. Accordingly, greater priority would be given to projects that are more strongly related to the general interest, rather than those aimed at the ‘domestic’ scope of the sponsoring department or agency.
- The **involvement of more than one government administration**, taking into account that they all form part of the General State Administration. Priority would be given to projects that require, involve or produce collaboration between various General State Administration departments and agencies or between the General State Administration and other levels of government.
- The **greater or lesser impact on the public**; greater priority would be awarded to projects aimed at individuals, companies, entrepreneurs and the third sector, rather than those focused on the internal workings of government and, within the former group, to those with most beneficiaries.
- The **total savings generated** by the project, for individuals, companies, entrepreneurs and the third sector, as well as the cost savings for government administrations.
- The **project implementation costs**.
- The **implementation schedule**, prioritising projects with shorter implementation periods rather than those requiring an extended period of time to become operational.

### C. FORMULATING PROPOSALS AND DRAFTING THE FINAL REPORT

In this phase, the SCAS would draft a final document, describing the bureaucratic simplification projects selected, the reasons for their selection and the proposals that, in its view, should be incorporated in the CORA document.

The SCAS would also **document the projects selected in the form of a fact sheet and an explanatory report** in accordance with the models approved by the CORA in plenary for use by the four Sub-Commissions. This phase was to be **completed by 30 April 2013** so that the proposals could be studied by the CORA in plenary and incorporated into the final document.

On completion of the first phase, and after extending the time limit for response to 15 January, the SCAS had obtained information on **over 400 administrative simplification projects from General State Administration departments and agencies**, including both Central Services and Peripheral Offices (Government representatives in the autonomous regions and islands).

On the basis of this information, and as part of the second phase of the work plan —analysis and evaluation— the necessary surveys were carried out to complete, clarify and systematise the data collected, and the **following decisions were taken**:

- Detail **the projects submitted by Government representatives in the autonomous regions and islands**, and refer them to the DG for Coordination with Peripheral State Administration, in the Secretariat of State for Public Administration.
- **Identify the projects** that, in the opinion of the Sub-Commission, **correspond to a different CORA Sub-Commission and refer them to the appropriate body**.
- **Classify the remaining projects as A, B or C**. To this end, an initial evaluation was carried out by each member of the Sub-Commission with respect to their department’s projects and those of the other departments assigned to them, and a second evaluation was performed by the Sub-Commission as a whole.



As a result of these two evaluations, the Sub-Commission obtained the following classification of projects: **60 A Projects, 133 B Projects and 5 C Projects.**

Since there was some disparity among the A Projects regarding the degree of “horizontality”, their impact on the public and other factors, a more tightly-focused selection was made by grouping the projects considered of most relevance. Thus, **a distinction was made between Projects A and AA , with 42 being classified as AA.**

Taking into account their importance, it was unanimously decided to propose in the plenary session of the CORA that **all these AA Projects be initiated in the short-to-medium term**, with the remainder being postponed until a later date, at the discretion of the promoting departments and organisations.

Subsequently, and within the final phase of the work plan, the Chair of the Sub-Commission **drafted and presented to the plenary session of the Commission a final document** setting out the background and the development of the simplifying processes initiated by the General State Administration up to the constitution of the CORA, summarising the work done by the SCAS, its proposals and an analytical study of each one, a diagnosis of the preceding situation, a forecast of the outcome expected after the implementation of the simplification measures and, finally, the conclusions drawn from the whole procedure.

We now **briefly describe the measures included in the final document**, grouped under five headings: **general proposals; major simplification projects; e-government; business support and economic revitalisation; public service.** Finally, a reference is made to the decision on administrative burden reduction taken by the Council of Ministers at the meeting held to consider the CORA report.

### 3. GENERAL PROPOSALS

- **Proposals: Ministry of Finance and Public Administration**

#### **Integrate conventional and electronic administrative procedures**

One of the general measures in this report refers to **regulatory administrative reform**, with the adoption of two provisions: one concerning the legal regime governing public administration, and the other for that governing administrative procedures. The latter area includes the project to integrate conventional administrative procedures with e-government.

Administrative procedures are currently regulated by Act 30/1992, of 26 November, on the Legal Regime for Public Administrations and the Common Administrative Procedure (LRJAPPAC). This Act applies to all levels of government and is, essentially, the continuation of the Administrative Procedure Act of 17 July 1958. As such, it adopts an exclusively legalistic and rights-based standpoint on legal and administrative processes.

Act 11/2007, of 22 June, on Electronic Access to Public Services (LAECSP), which also applies to all levels of government, introduced a number of provisions on e-government into the administrative procedure, fostering the use of electronic resources in administrative processes and procedures. However, these were not integrated with the provisions stipulated in the LRJAPPAC.

**The lack of integration between LAECSP and LRJAPPAC** resulted in an overlapping of legal systems. On the one hand, this could lead to **confusion and legal uncertainty** and, on the other, **it impedes the implementation of e-government resources.** This problem is especially evident in such important issues for administrative procedure as the accreditation of identity (e-signatures and e-certificates), the date of effectiveness (the validity of electronic records), documentation (the validity of data transmissions with respect to their supporting documents) and their conclusion (electronic notifications and their mandatory nature).

Therefore, as appropriate content of the future reform of administrative law, **we propose that the rules governing administrative procedure should integrate conventional and e-government administrative procedures.**



## Develop a General State Administration Manual for regulatory improvement and the reduction of administrative burdens

At present, the General State Administration has no manual on regulatory improvement and the reduction of administrative burdens, and the only documents available in this respect are a few informative papers published under the Burden Reduction Plan, dating from 2007, and the Methodological Guidelines for the Analysis of Regulatory Impact, approved by the Council of Ministers decision of 11 December 2009, pursuant to the provisions of Royal Decree 1083/2009, of 3 July.

The latter Methodological Guidelines do set out principles for the identification and measurement of administrative load, using the Simplified Standard Cost Model, but these are intended exclusively for the preparation of Regulatory Impact Reports and lack a general overview. Furthermore, they do not take into account the measures introduced under Act 12/2012, of 26 December, on urgent measures to liberalise trade and certain services (replacing mandatory authorisations with sworn statements and prior communications), nor do they contain provisions concerning the measurement of the “real” times required for administrative procedures. Another relevant factor is that some autonomous regions have drafted their own manuals for reducing administrative costs.

These considerations hamper the introduction of new processes to reduce administrative burdens in General State Administration departments and agencies, while limiting the technical correctness and appropriateness of such processes. Moreover, effective tools have not been developed for calculating times for completing procedures, and this impedes the adoption/implementation of techniques for improving the performance of administrative services and reducing processing times. Measurement of these times is a matter of essential importance, but to date consideration of government performance has tended to emphasise the quality of service and to neglect certain aspects of regulation and control, in which the time required for procedures to be carried out is a very significant variable.

Accordingly, we believe it necessary to draw up a **manual for the General State Administration, on regulatory improvement and the reduction of administrative burdens**, to be consulted and applied by every ministry wishing to present projects in this respect, with special emphasis on the measurement of processing times. The first general measure addressed in this report is that of creating systems for measuring productivity and efficiency, in order to measure the real and the optimal time required for dealing with files, among other variables. This latter method will be recommended in the Manual.

The Manual must provide, at least: a) a common methodology for all General State Administration departments and agencies to identify administrative burdens (documents that need not be required of those seeking to initiate or continue an administrative procedure; the possibility of requiring documentation only of the ultimate beneficiary or contract awardee and not of all parties concerned; electronic signature recognised according to principles of proportionality, etc.); b) a methodology to estimate the “reasonable” time, and not merely the legal maximum time, for completing an administrative procedure, based on the number of processes involved in the sequence, the time required by the administrative department for each such process, the human and material resources available to the department and the number of such processes being addressed simultaneously.

When the Manual methodology is established, **together with the “legal” time to complete each administrative procedure, the average “real” completion time** will be published on the O60 Portal and the websites and virtual offices of each General State Administration department or agency. This change will be introduced gradually, starting with the procedures that can be readily assessed and those which have greatest impact on the interested parties. Thus, not only will the transparency of administrative action be increased, but the resources applied by each organisation to these procedures can be optimised, the administration process accelerated, productivity and staff performance evaluated more efficiently (with the consequent impact on remuneration with respect to this concept) and knowledge acquired of the “best practices” and “success stories” reported by comparable bodies.

#### 4. MAJOR SIMPLIFICATION PROJECTS

##### A. ENVIRONMENTAL PROCEDURES

- **Proposals: MINISTRY OF AGRICULTURE, FOOD AND THE ENVIRONMENT**

For structural reasons, Spain has a large number of business sectors whose activity is affected by environmental legislation. The need to protect the environment and the importance and multiplicity of social interests involved in this question affect the complexity of the legislation, which in many aspects is international in scope, and the volume of administrative burdens created. This field is one in need of considerable simplification, and warrants particular attention. It should be noted, moreover, that the scope of the measures taken in this field is very significant; it affects both the General State Administration and all other levels of government, and is closely linked to the principle of market unity. The following measures are proposed by the Sub-Commission:

##### **Simplify and reduce administrative burdens in procedures relating to the management of the public water domain**

The basic goal is to accept the provision of sworn statements whenever practicable (authorisations for actions of limited impact regarding public water, discharge permits for non-contiguous dwellings, etc.), to simplify the current structure of collegiate bodies in this field and to facilitate the use of ICTs in the corresponding administrative processes (virtual office, electronic processing, etc.).

##### **Simplify and reduce administrative burdens in procedures relating to the management of the public maritime-terrestrial domain**

The basic objective of the proposal is to obtain a precise delimitation of all that constitutes the maritime-terrestrial public domain, ensuring the property boundaries for the entire Spanish coastline are recorded in the Land Registry and published on the Ministry website. These measures will be addressed in the Regulation implementing Act 2/2013, of 29 May, on the protection and sustainable use of the coast, and amending Coastal Act 22/1988 of 28 July.

##### **Simplify and reduce administrative burdens in procedures relating to Integrated Environmental Authorisations**

These measures will: a) eliminate the obligation for interested parties to present, in procedures to acquire, modify, review or update an integrated environmental authorisation (IEA), the documentation that was previously presented with the original application; b) reduce to nine months the period for an IEA to be granted, eliminating the additional month previously allowed for the river-basin management authority to issue the mandatory and binding report on discharge; c) establish a simplified procedure for substantive changes to the IEA, adapting it to new environmental and technological circumstances; d) eliminate the obligation on the holder of an authorisation, eight years after its award, to apply for its renewal, at least ten months before the expiry of this term, so that the competent body could ensure it remained appropriate to the situation; instead, the environmental agency, on its own behalf and in a simplified procedure, will conduct the review of the authorisation; e) establish a simplified procedure for the autonomous regions to update their IEAs to the new European regulations before 7 January 2014; f) enable various installations sited in the same geographic location, even if operated by different owners, to obtain a single IEA; g) require the electronic publication of administrative decisions, and the conditions attached to them.

## **Simplify and reduce administrative burdens in procedures relating to waste management**

These measures will: a) eliminate repeated obligations; thus, when a company reports its activities in one autonomous region and this is entered in the corresponding record of waste production and management (whether single-operator or in association with others) no further such presentation need be made in other autonomous regions in which it is active; b) create an electronic platform which will progressively incorporate all administrative actions with respect to waste management, for all autonomous regions, including transfers and the activity reports to be submitted annually by waste managers.

## **Simplify and reduce administrative burdens in procedures relating to environmental assessment**

These measures will: a) combine into a single rule the procedures for strategic environmental assessment and for environmental impact assessment; b) simplify procedures to reduce the time involved; c) introduce electronic resources to carry out these procedures; d) simplify procedures for projects with slight environmental impact. These measures are included in the Environmental Assessment Bill, which received a favourable report in the first reading by the Council of Ministers of 19 April 2013 and was then made available for public consideration, until 25 May.

## **Simplify and reduce administrative burdens in procedures relating to environmental liability**

These measures will: a) establish a clear, simple procedure of environmental responsibility, in which all concerned are aware of their responsibilities, thus reducing administrative processing times; b) limit the guarantee requirements imposed on activities presenting most risk of environmental damage (reducing the number of operators required to provide such financial sureties by 97%); c) use risk analysis to calculate the amount of the financial surety required, and require the operator to provide a sworn statement to the competent authority that the surety meets all legal requirements; d) simplify the system for determining the amount of the surety so that in the corresponding analysis of environmental risk it is no longer necessary to quantify and monetise all risk scenarios when a new procedure is introduced; e) eliminate the verification of risk analyses performed by the operator.

### **B. CUSTOMS PROCEDURES**

- **Joint proposal**

#### **Introduce a 'one-stop' virtual office for foreign trade**

At present, customs authorities impose various unnecessary administrative burdens, especially concerning the documentation required for the dispatch of goods. This situation adversely affects the activity of numerous companies that are active in foreign trade, a sector that is essential for the country's economic health.

The creation of a one-stop electronic office will shorten processing times, reduce delays, unify and consolidate forms, reduce the volume of paper documentation required for foreign trade and expedite the clearance of goods by avoiding the double localisation of containers and by coordinating physical controls, to be performed just once, in a procedure that is valid for all supervisory bodies involved.

Therefore, the Sub-Commission proposes such a one-stop office be created, making it possible to centralise the information submitted to the different authorities regulating foreign trade, avoiding duplications, facilitating administrative procedures and improving coordination between the authorities in this area.

## 5. E-GOVERNMENT

### A. IMPROVING THE HORIZONTAL SERVICES OF E-GOVERNMENT

- **Proposals: Ministry of Finance and Public Administration**

**Enhance the data intermediation platform as a means of implementing citizens' right not to submit documents that are already held by the Administration.**

**Implement the electronic record of powers of attorney and promote its use by General State Administration departments and agencies.**

Following the adoption of the Electronic Access to Public Services Act (LAECSP) and its implementing regulations, and in order to give effect to the general right of citizens to access public services electronically, government administrations have launched a series of horizontal platforms or e-services, to support the extension of e-government and to facilitate the use of electronic resources in administrative procedures.

With specific regard to the General State Administration, although some are applicable to all public administrations, the following services or platforms, among others, have been implemented:

- The data intermediation platform, as a means of implementing citizens' right not to submit documents that are already held by the Administration.
- The electronic record of powers of attorney, i.e., the powers of representation granted by individuals and companies to engage in electronic communication with the General State Administration.

These systems are currently managed by the DG for Administrative Modernisation, Procedures and Promotion of e-Government, which is the maximum authority within the General State Administration with respect to the promotion of e-government. Although from a technical standpoint all these platforms and services are fully operational, for various reasons unrelated to ICTs their application in practice remains far from meeting the goals of "horizontality".

The reasons for this mainly concern their voluntary nature, i.e., the fact that these are services in which General State Administration departments and agencies, and those of other levels of government, may choose not to participate. Moreover, this optional participation has facilitated the existence of parallel "vertical" services provided by the Tax Authority and by the Social Security General Treasury, which are not integrated with the general services.

Apart from the operational deficiencies of the existing horizontal platforms, there is another weakness in the current situation regarding horizontal e-government services: the lack of implementation or development of other platforms that are necessary for their provision and for the effective provision of citizens' rights. To remedy this situation, the Sub-Commission proposes the following measures:

- Enhance the data intermediation platform, as a means of implementing citizens' right not to submit documents that are already held by the Administration.
- Implement the electronic record of powers of attorney and promote its use by all public sector departments and agencies.

## **Extend the corporate image to the electronic and computerised documents produced by the General State Administration.**

At present, the vast output of electronic and computerised documents from the General State Administration, in the form of reports, spread sheets and presentations, contain corporate image elements devised according to widely varying criteria. This measure seeks to extend the standard image of the institution to these documents, to achieve its **definitive regularisation throughout the General State Administration, and thus reinforce the latter's identity and singularity before the public and other domestic and foreign administrations.**

- **Joint proposals**

### **Bulletin board for public administrations**

This measure is aimed at establishing a single e-government bulletin board, which might be located on the website of the Official State Gazette, to publish all the notifications currently made by individual General State Administration departments and agencies.

Other ministries have informed of measures taken for similar purposes, for specific areas of administrative action (for example, the Ministry of Education, Culture and Sport has created an electronic bulletin board regarding procedures for the protection of intellectual property rights on the internet, and provides information on scholarships and study grants on the Ministry website).

### **Electronic auction system: the application of Official State Gazette Auctions - Judicial Auction Portal**

This measure, concerning the auctions publicised in the Official State Gazette, comprises: a) promoting the generalised use of electronic auctions, in judicial and administrative spheres; b) a greater provision of personalised services, that are easy to access, simple and intuitive; c) the shared use of the auctions platform by the Tax Authority, the Social Security General Treasury (if applicable) and the judicial authorities.

### **B. REPLACING CONVENTIONAL PROCESSING WITH ELECTRONIC METHODS**

Despite the efforts made in recent years by General State Administration departments and agencies in the promotion of e-government, many administrative processes still remain in which the face-to-face service party and/or paper-based proceedings could be replaced by the use of electronic transactions.

In anticipation of the future Administrative Procedure Act, continuing encouragement should be given to replacing conventional procedures with electronic alternatives, thus increasing the effectiveness and efficiency of government, improving public service and reducing financial and environmental costs.

- **Proposals: Ministry of Employment and Social Security**

### **Generalise the issue of European health documents without requiring attendance at Social Security offices**

The purpose of this project is to enable citizens to apply for and obtain the European Health Insurance Card or the Provisional Replacement Certificate without having to attend Social Security offices in person, by creating an electronic channel to facilitate this procedure (which involves the issue of 2.7 million documents every year) in a fast, straightforward and secure way.

## **Prior appointment system at National Employment Service offices**

This project will introduce the prior appointment system at the 707 offices of the National Employment Service. The system is based on the consecutive assignment of available appointments, by phone or by internet, to provide information and carry out employment-related procedures.

## **Report on Social Security contribution status**

An online service will be created on the Social Security website to provide employers with information about their Social Security contribution status; this situation will be provisional, until the full development of the general project for Social Security electronic administration, as described below.

- **Proposals: Ministry of Finance and Public Administration (Tax Authority)**

## **Develop personalised electronic services, in particular of RENO and CERO, together with a higher proportion of automated administrative actions.**

This has the following main aims: a) to improve the usability of the portal and the virtual office, by increasing personalised services and making them easy to access, simple and intuitive; b) to encourage the provision of services by electronic means, in particular RENO (the provision, modification and confirmation by internet of draft tax returns) and CERO (the provision of tax authority certificates, such as declared income, or status with respect to tax obligations); c) to increase the level of automated administrative actions.

## **Unify and simplify systems of non-advanced identification and authentication. Promote the use of civil servant ID certificates.**

In line with improving internet-based services, the identification and electronic signature systems accepted by the Tax Authority will be simplified. For the present, it is advisable to review the non-advanced signature systems, consolidating them into a single model based on common criteria, to facilitate and simplify access to online services.

Moreover, the use of civil servant ID certificates should be promoted, as a tool to improve inter-administrative cooperation and the exchange of information.

Accordingly, the measures referred to in this project are: a) to unify and simplify non-advanced identification and authentication systems in order to facilitate their use by taxpayers; b) to accept and enhance civil servant certificates for electronic identification and authentication.

## **Extend the mandatory electronic filing of returns and other documents.**

The aim of the Tax Authority is to encourage taxpayers to file returns and other documents electronically, and to increase the provision of personalised services.

The measure proposed will make it possible to present all tax statements and self-assessments online, and to extend the mandatory nature of this procedure to new categories of taxpayers, such as persons who have not requested draft tax returns, those with assets exceeding a wealth threshold (yet to be determined), joint property entities and legal persons.

The project includes the following measures: a) to extend the mandatory electronic filing of tax returns; b) to introduce the mandatory electronic filing of documents for certain groups of taxpayers; c) to extend the scope of the persons subject to mandatory electronic notification.



- **Proposal: Ministry of Industry, Energy and Tourism**

## **Simplify the procedure for vehicle homologation**

The project will allow the online filing of the homologation applications (about 25,000 per year) required before motor vehicles can be registered, in accordance with European Community rules and the national legislation transposing and implementing EU directives. Application of this project will be adjusted to each type of homologation and the procedure will be carried out totally electronically, as the administration will evaluate the documentation online, issue the digital signature of the certificate and automatically provide the corresponding documentation on a web page.

- **Proposals: Ministry of the Interior**

## **Online communication of data on rental and habitual drivers to the Registry of Motor Vehicles and other agencies**

This project establishes a new online channel of communication, integrated with other administrations and external agents (Tax Authority, municipalities, motor vehicle tax-handling agencies, mercantile registers and insurance companies) for information to be provided to the Registry of Motor Vehicles regarding compliance with tax obligations, charges or encumbrances and the validity of vehicle insurance. In addition, an online channel will be established with the Registry for the natural or legal person who is the rental-car driver or habitual driver of the vehicle.

## **Prior online appointment system for traffic authority offices**

Software is being developed so that citizens, either through the website ([www.dgt.es](http://www.dgt.es)) or via the second level of the 060 system, may obtain a prior appointment to be attended at traffic authority offices.

- **Proposal: Ministry of Justice.**

## **Introduce a new electronic case file system for the High Court (Central Contentious-Administrative Courts and Contentious-Administrative Chamber) and the Social Chamber of the Supreme Court.**

This project aims to build on the introduction of electronic case files in the High Court in 2011, which led to this system being applied in the Social Chamber and in the twelve Central Contentious-Administrative Courts.

The system was a development of the procedural management system used by the Department of Justice, complementing the latter with a digital signature platform and a document manager/viewer.

Time and experience have shown that the former system had certain limitations and that this paper-based approach was not suitable for processing digital files.

The proposed electronic case file will facilitate the effective control of proceedings and of tasks remaining to be completed, as well as document management, by enabling electronic filing.

## **Electronic processing by health centres of births and deaths**

For births, it is proposed that the Civil Registry Office should be notified directly by the health centre where the birth took place, which would also ensure the mother-child bond is maintained, and the necessary biometric, medical and analytical tests performed to ensure the veracity of the relationship. These

data, too, would be transmitted by the health centre, together with the recognised electronic signature of the medical practitioners involved.

Data for deaths would also be communicated electronically to the Civil Registry, with the necessary precautions should the circumstances warrant judicial intervention.

- **Proposals: Ministry of Health, Social Services and Equality**

## **Prescription medicines containing narcotic drugs**

This measure is aimed at simplifying the prescribing and dispensing of medicaments containing narcotic drugs, for human use, by integrating into a single document the official prescription form for narcotic drugs and that for other medicaments into a single document. This will simplify the mechanisms for the processing and supervision of the movement of medicaments and narcotic drugs.

## **Interoperable electronic prescription**

This measure supports the initiatives of autonomous regions to develop and implement the use of electronic prescriptions, by introducing mechanisms for these regional systems to interoperate with each other, initially at a national level, and eventually throughout the EU.

The following specific measures are proposed: a) enable citizens to obtain their prescribed medication from any pharmacy in the country, by secure electronic access to their prescription; b) improve the quality of care, ensuring that health service professionals share information on the prescription and dispensation of drugs for a patient; c) facilitate the implementation of information systems so that autonomous regions are aware of the transactions that take place between them in prescribing/dispensing medicaments for patients temporarily away from home.

## **Create a Health Service database for medical cards**

The main benefit to be derived from the creation of a Health Service database of medical cards is that it will enable all citizens to be identified using a single national code, one that is unequivocal, lifelong and valid throughout the country.

This innovation, together with the Single Health Card Project, to regulate the physical format of the different medical cards currently available, will better identify patients and their membership of the Spanish health care service. These aspects, as well as contributing to guaranteeing the right to health protection throughout the country, are necessary for the secure consultation of patients' clinical data when they are away from home and treated in another autonomous region or in another EU Member State. The reform also means that the regions will not need to renew health cards, and thus financial savings will be made.

## **Introduce interoperable computerised health care records**

This is a key element in the implementation of ICTs in the Spanish health care system. Computerised health care records will contain clinical and other information needed by the physician (or other health care professionals involved), arising from observations and decisions during the health care process. This computerisation should not be viewed merely as a means of data storage and retrieval, but also as an instrument for coordinating health care personnel and for providing a link between them and their patients throughout the process. The project will provide the following main benefits:

- When patients move from one region to another, they can be treated by medical or nursing professionals with access to relevant clinical data.

- Health care professionals will be provided with valuable information resources.
- Individuals can have secure electronic access to their medical data and can also determine which health care centres and services have accessed this information.
- Patient safety will be increased, through the prevention of errors due to decisions based on information that is incomplete or hard to understand.
- The repetition of diagnostic tests and procedures will be avoided, as prior results can be consulted, thus saving time and reducing inconvenience.

## 6. SUPPORT FOR BUSINESS AND INVESTMENT

### A. REDUCING FORMALITIES

Cutting through the red tape that hampers companies and entrepreneurs has been a constant goal of the administrative simplification process in Spain in recent years. It is also a fundamental element of the OECD's "Better Regulation" policy and forms part of the effort to raise the quality of EU legislation, in the view that improving companies' functioning and competitiveness is of fundamental importance to an economy seeking to increase productivity and raise its level of activity.

The Action Plan to reduce Administration Burdens, together with government decisions in this respect, contained numerous measures for administrative simplification focused on the business world. Many of these measures were also suggested or promoted by business organisations (Spanish Confederation of Business Organisations, Spanish Confederation of SMEs and the High Council of Chambers of Commerce) through collaboration agreements with the General State Administration, as mentioned in the Introduction.

Although appreciable results have been achieved, especially in terms of lightening the administrative load on business, more remains to be done. In this respect, Act 12/2012 on urgent measures to liberalise trade and the creation of new instruments to enhance the flexibility and liberalisation of economic activity enabled further administrative simplification for businesses.

- **Proposal: Ministry of Economy and Competitiveness**

#### **Review of the 300 m<sup>2</sup> threshold for commercial establishments**

Administrative requirements for the opening of new establishments dedicated to commercial activities and services, sited within business premises occupying less than 300 m<sup>2</sup> were simplified by Act 12/2012, of 26 December, on urgent measures to liberalise trade and certain services (sworn statement and prior communication). The Entrepreneurship Support and their Internationalisation Draft Law considers raising this threshold.

- **Proposal: Ministry of Finance and Public Administration (Tax Authority)**

#### **Participation of consular offices in providing tax ID numbers and electronic certificates to non-residents**

The aim of this reform is to alleviate the problems encountered by non-residents in their dealings with the Tax Authority in areas such as identification, obtaining electronic signatures, filing returns, making payments from abroad and obtaining refunds payable to foreign accounts.

The project involves the signing of a cooperation agreement between the Tax Authority and the Ministry of Foreign Affairs and Cooperation for consular authorities to be empowered to assign tax ID numbers to non-residents. In a second phase, consular offices may also be allowed to act as registry offices for non-

residents, thus facilitating the provision by these offices of the electronic signature certificate administered by the Spanish Mint.

- **Proposal: Ministry of Industry, Energy and Tourism**

## **Administrative simplification in public procurement**

The aim of this measure is to simplify contract formalities to facilitate access by companies, and especially SMEs, to public procurement, to increase the efficiency of public spending and to ensure the best possible outcome in terms of value for money.

According to the European Commission's latest assessment of the implementation of the Small Business Act in Spain, the proportion of SMEs in public procurement in Spain is 5 points lower than the EU average of 38%. This finding highlights the need for corrective measures to be taken, especially in these times of economic crisis, where particular attention must be paid to SMEs, the mainspring of job creation.

Accordingly, the Entrepreneurship Support and their Internationalisation Draft Law includes **measures to raise the thresholds for contractor classification, and to ensure greater flexibility in the requirements for sureties and supporting documentation.**

- **Joint Proposal**

## **Simplify administrative procedures for business start-up: reducing times and costs**

The Sub-Commission has promoted various initiatives to facilitate business start-up. The **administrative simplification project "Entrepreneur in 3 steps", approved by the Council of Ministers decision of 31 May 2013**, enables a sworn statement to be accepted for online company start-up, replacing the previous requirement for a municipal licence. The model for this electronic document presentation is accepted by all municipal authorities.

The forthcoming VII Decision on **reducing administrative burdens and improving regulation**, to be adopted by the Council of Ministers in July 2013 (see below) eliminates some other formalities previously required for business start-up, such as the verification of the record of Labour Inspectorate visits, which is no longer necessary for microenterprises.

These initiatives complement those included in the **Entrepreneurship Support and their Internationalisation Draft Law**, such as the possibility for limited liability companies to be created with no minimum initial capital being required, in the 'successive start-up' regime; the unification of the One-Stop Business Office and the Business Start-up Advice Points, to constitute a single, readily-accessible system; and the online legalisation of limited companies' shareholder ledgers.

## **B. RESEARCH, INNOVATION AND DEVELOPMENT**

At present, stringent information reporting requirements are imposed for the scientific and technical assessment of R&D assistance awarded in competitive processes, generally involving the provision of a large number of documents. The following changes are needed:

- Reduce the administrative burdens associated with applications for public R&D&i assistance.
- Unify reporting requirements, criteria and procedures for scientific-technical evaluation to reduce variance, improve service quality and increase efficiency in the allocation of public resources.
- Standardise and share evaluation procedures, criteria and infrastructure among government authorities – central and regional – and promote collaboration among them.

- Reduce project evaluation times, and thus resolution times, for calls for applications and for fund awarding.
- Standardise evaluation forms and formats, using common, compatible electronic and telematic systems, and avoiding duplication in evaluation reports.
- Promote the recognition of scientific and technical evaluations conducted by recognised agencies using equivalent processes, while fostering transnational evaluation.
- Eliminate the costs arising from re-evaluating proposals already assessed by other agencies.

The following measures are recommended to **simplify the scientific and technical evaluation of projects and other assistance to promote research**: a) progressively adopting an evaluation model based on the pre-selection of proposals, based on limited documentation; b) extending the mandatory use of standardised curriculum vitae; c) adopting common criteria and procedures for all government administrations; d) using simplified evaluation forms.

## 7. PUBLIC SERVICE

### A. PROJECTS OF A HORIZONTAL NATURE

- **Proposals: Ministry of Finance and Public Administration**

**Establish a General Access Point as a gateway to government administrations, facilitating horizontal information on their activities, organisation and operation and enabling citizens to conduct administrative procedures and access services.**

Article 8 of Act 11/2007, of 22 June, on electronic access to public services, and Royal Decree 1671/2009 of 6 November, which extended this Act, in its Introduction and in Articles 7, 8, 9, 24 and 31, and in the second additional provision, enabled different levels of government to create their own General Access Points, and defined, regulated and described the basic features to be included.

At present, the portal [www.060.es](http://www.060.es), created to assist individuals and businesses in their relationships with government bodies, functions as a General Access Point. Nevertheless, although it is one of the most frequently-visited government portals, **this 'brand' remains relatively unknown and is not commonly identified with the General State Administration or with government bodies.**

Therefore, **a redesign is needed, to implement a new portal** that complies with regulatory requirements and meets citizens' expectations. **The implementation of a single entry point will allow citizens one-stop access to information from different levels and areas of government**, providing guidance in their dealings with the administration, enabling administrative actions to be initiated and reflecting the state of progress of bureaucratic formalities, at any time. It will also provide citizens with ready access to government services through a straightforward classification of subjects and events.

In addition, **it will centralise assistance to businesses and entrepreneurs**, presenting in a clear, intelligent format all the possibilities offered by government bodies for the online creation of companies. The public will also be able to interact with government bodies by means of **the leading social networks**. **Other portals, established previously, will be incorporated into the single entry point**, to reduce their number and to achieve financial savings, regarding maintenance and updating costs.

**Restricted or private areas** will be created for users, to which access will be controlled by advanced authentication systems. It may even be possible to use these spaces to establish a **"Personal Folder"**, i.e., a virtual file containing details of all the dealings between an individual and the public administration, together with the corresponding hyperlinks.

The 060 telephone service will be extended to all areas of government, with public-service numbers being centralised with 901 and 902 prefixes, and the different departments and agencies located in the 060 'cloud' platform.

The Administration currently has an **Intelligent Network telephony platform functioning in the cloud (24-7-365)**. This platform is connected to the **Public Administration Applications and Networks System (SARA)** which enables the online provision of services, via a cloud-based telephone operator that transfers calls to the corresponding areas of government. The intention is to **extend this service to all levels of government**, through voluntary collaboration.

By these means, **access to public attention services will be simplified**, requiring only the use of a readily-memorised telephone number to communicate with government departments, and creating a single channel to information providers and other services. This reform **will rectify the current proliferation of teleoperation services**, and generate significant financial savings.

## B. ELIMINATING AUTHORISATION REQUIREMENTS

- **Proposal: Ministry of Education, Culture and Sport**

**Elimination of the requirement of prior authorisation for sports training activities promoted by national or regional sports federations.**

This measure replaces the authorisation procedure for certain training activities promoted by national and regional sports federations, currently granted by the corresponding DG for Sport, with a sworn declaration of responsibility by the promoter. It simplifies administrative procedures for course applications and eliminates management overlaps, by reducing administrative requirements for sports training activities promoted by national and regional sports federations, thus speeding up procedures, enabling these federations to offer more training activities, and expanding their funding channels beyond the public grants provided.

## C. SPECIFIC SERVICES

- **Proposals: Ministry of Employment and Social Security**

**Development of public e-office information services and the management of Social Security benefits.**

This project seeks **to transform the current model of public attention provided by the National Institute of Social Security (INSS), from face-to-face service to the incorporation of an effective online channel of communication**. This will give citizens freedom to choose how they wish to interact with the INSS, and ensure that in all cases the necessary proceedings can be completed within the same channel.

In addition, **citizens will be able to exercise their right to be informed about the Social Security system, and provided with essential information for the exercise of their rights and to take appropriate decisions in this area**. The project includes the implementation of a platform in which each citizen will have their own space through which to seek and receive personalised information, on the basis of their situation and interests.

In addition to its informative function, the e-office will allow users to conduct all kinds of administrative processes and obtain an immediate response to their applications, via automated management mechanisms. It will not be necessary to obtain and fill out application forms, but merely to validate and, if necessary, complete those offered by the system. Thus, reports and certificates can be obtained in real time



from home or office, and users can know in advance all the characteristics of the benefit to which they are entitled, by means of simulators. If the system detects circumstances calling for action, users can be asked, automatically, to perform the required procedure, in the exercise of their rights.

The project will also have a positive impact on the quality of attention provided in person and by telephone, as Social Security personnel will have access to an online information service and will be able to process items directly based on the specific data for the person requiring attention.

The key element of the project, therefore, is the ease of use of the new e-office, providing users with a service that maintains the same levels of quality and safety as are available with in-person services, while eliminating delays and the need to travel to government offices.

### **Extension of access to information on future pension entitlements to those aged over 50**

At present, 310,000 citizens receive this information every year; the goal is to raise this number to the 4.5 million persons who are aged over 50 years and occupationally active.

### **Visibility of job offers**

A single internet portal will be created to display all the job offers communicated to the regional and national Public Employment Services. This portal will be open to all, both job-seekers and companies offering employment.

- **Proposal: Ministry of Justice**

### **Computerisation of the e-information office and assistance for victims of terrorism**

Victims of terrorism will be furnished with private access to the status of their administrative procedures and to e-office assistance from anywhere with an internet connection. Electronic public access to information about the victims and their rights and about the activity of the e-office will also be established. In addition, various improvements will be made in the management of the e-office.

- **Proposal: Ministry of the Presidency**

### **Establishment and extension of a 'personalised' Official State Gazette**

An electronic system of customised alerts will allow citizens to access information of their specific interest that is published in the Official State Gazette (BOE). By means of the corresponding subscription, users can receive alerts about notices and announcements in specified areas.

The BOE is also working to enhance awareness of the regulations that are published, by providing, online and free of charge, codes containing up-to-date legislation, classified by the corresponding areas of the law and the sectors in question. The information published in official regional gazettes is also provided on the BOE website.

## **8. COUNCIL OF MINISTERS DECISION ON REDUCING ADMINISTRATIVE BURDENS AND IMPROVING REGULATORY PROCEDURES**

In July, the Council of Ministers approved its **Decision VII on reducing administrative burdens and enhancing regulatory procedures, ordering more than 60 simplification measures**, including:

- Facilitating the immediate activation of the inspection record book when a company registers electronically with the Social Security system.
- Facilitating the electronic presentation of the documentation required by the Labour Inspectorate.
- Facilitating the direct online contracting and payment of motor vehicle insurance.
- Facilitating the online communication of claims and payments procedures with respect to private motor vehicle insurers.
- One-stop authorisation for centralised import clearance and dispatch with other Member States.
- Eliminating the requirement for insurance and reinsurance brokers to report semi-annual statistical data.
- Eliminating the requirement for insurance agents and bancassurance operators to submit semi-annual business information to the DG for Insurance and Pension Funds.
- Implementing electronic tendering in all areas of the National Institute of Health Management.

These measures, examined by the Sub-Commission, have been coordinated with the Ministry of Employment and Social Security, the Ministry of Agriculture, Food and the Environment, the Ministry of Health, the Ministry of Social Services and Equality, the Ministry of Infrastructure, the Ministry of Economy and Competitiveness and the Ministry of Finance and Public Administration and, with the business sector, the High Council of Chambers of Commerce, Industry and Navigation, the Spanish Confederation of Business Organisations and the Spanish Confederation of SMEs.





# Sub-commission for management of common services and resources





## VI. SUB-COMMISSION FOR MANAGEMENT OF COMMON SERVICES AND RESOURCES

### 1. INTRODUCTION. OVERALL CURRENT SITUATION

Article 103 of the Spanish Constitution contains the basic principles which must govern the activities of the Administration, namely: service, objectivity, generality, effectiveness, hierarchy, decentralisation, deconcentration and coordination.

Together with other constitutional principles, it should be noted that the Spanish Constitution also connects the General State Administration (GSA) to the **principle of effectiveness**. Indeed, the workings of the State administrative machinery must be tailored to management by objectives and to quality as a standard way of providing services.

In turn, Articles 3 and 4 of the Act on the Organisation and Operation of the General State Administration (LOFAGE) regulate a series of widely-known principles which govern its workings as follows:

#### Article 3. Principles of organisation and operation.

The General State Administration is organised and acts, with full respect for the principle of legality, in accordance with the other principles listed below:

##### 1. Organisational Principle.

- a) Hierarchy.
- b) Functional decentralisation.
- c) Functional and territorial deconcentration.
- d) **Economy, appropriateness and strict adjustment of resources to institutional purposes.**
- e) Simplicity, clarity and closeness to citizens.
- f) Coordination.

##### 2. Operational Principle.

- a) **Effectiveness in meeting set targets.**
- b) **Efficiency in the allocation and use of public resources.**
- c) Programming and development of targets and control of management and results.
- d) **Responsibility for public management.**
- e) **Rationalisation and flexibility of administrative procedures and of material activities of management.**
- f) Effective service for citizens.
- g) Objectivity and transparency of administrative action.
- h) **Cooperation and coordination with other Public Administrations.**

#### Article 4. Principle of citizen service.

##### 1. Actions by the General State Administration must guarantee citizens:

- a) The effectiveness of their rights when relating to the Administration.
- b) **The continuous improvement of public procedures, services and provisions in accordance with Government policies and taking available resources into account, identifying to this regard the provisions provided by state services, their content and the corresponding standards of quality.**



2. The General State Administration will perform its activity and organise administrative units and, in particular, peripheral offices, so citizens may:

- a) Put their affairs in order, receive assistance in the formal drafting of administrative documents and **receive information of general interest by telephone, electronically or online.**
- b) File complaints which are not in the form of an administrative appeal with regard to the functioning of administrative units.

3. Every Ministry will remain permanently up to date and will be at the disposal of citizens in its corresponding information units, organisational structure and that of its dependent bodies as well as the information guidelines on administrative procedures, services and provisions applicable in the area of competence of the Ministry and its public bodies.

Spain's Public Administration operates with respect for these principles, with continuous processes which improve the effectiveness, efficiency and quality of services.

**This aim** led to the formation of the Sub-Commission for Management of Common Services and Resources. The Sub-Commission also analyses the possibility of **generating savings when any inefficiencies in its workings are detected**, with regard to the provision of certain services, or in the use of resources which are shared by different Departments of the General State Administration or by other Administrations, as well as **«to centralise management activities which, on being of the same or similar nature, may be performed in a unified or coordinated manner, thereby taking better advantage of public resources».**

## 2. WORKING METHOD

The Sub-Commission was established under the presidency of the Under-Secretary of the Ministry of Defence and has comprised representatives of the Ministries of Finance and Public Administrations, Infrastructure, Employment and Social Security, Health, Social Services and Equality, and Industry, Energy and Tourism.

After it was formed, the Sub-Commission proposed the conceptual determination of common resources, for which it was decided to abide by the provisions of the LOFAGE, which in Section IV, Articles 20 and 21 states the following:

### SECTION IV. THE COMMON SERVICES OF MINISTRIES.

#### Article 20. General rules on common services.

**Common services include advice, technical support and, where appropriate, direct management with regard to the functions of planning, programming and budgeting, international cooperation, external action, organisation and human resources, information and communication systems, normative production, legal aid, financial management, management of material resources and auxiliary services, monitoring, control and inspection of services, statistics for state purposes and publications.**

#### Article 21. Basic organisation of ministerial common services.

Common services will be integrated into a Sub-Secretariat which reports directly to the Ministry, to which a Technical General Secretariat will be attached as well as the other bodies specified by the Royal Decree on departmental structure.

The successful experience of major multinational companies has served as a guide for the proposals formulated by the Commission for Public Administration Reform (CORA) in this area.

Based on these experiences, and on the results of the centralisation processes of other States, there has been analysis of those resources contracted by the various ministerial Departments which meet the characteristics allowing the formation of centralised contracts with the aim of cost-saving. Furthermore, the services considered are those whose management may also be centralised. This produces not only cost-saving but also improvements in efficiency.

The measures proposed by the CORA have been designed for the General State Administration but this does not prevent other territorial administrations from adopting them when possible. In the cases when this is not feasible, other public subjects may incorporate and replicate the new management models described below.

The areas which have been assessed include the following:

1. Human resources.
2. Computing and e-government.
3. Real estate management.
4. Liquid assets.
5. Service and supply contracts.
6. Centralised management of contract services.
7. Agreements.
8. Management commissions.
9. Notifications.
10. Vehicle fleet.
11. Publishing and printing.
12. State air and sea assets.

To expedite its activities, the Sub-Commission **agreed to create working groups** devoted to in-depth analysis of different areas within their respective competences.

Moreover, in the light of the Agreement of the Council of Ministers with regard to the need to study the successful models implemented in Spanish business groups with the aim of obtaining information and collaboration, meetings have been held with representatives of some major Spanish and foreign companies including Banco de Santander, Inditex, IBM, Mapfre, Informática El Corte Inglés, Telefónica, Microsoft, British Telecom and Correos Telecom.

### 3. HUMAN RESOURCES

The distribution of competences in human resource management in the Ministries has been analysed. This was based on the reform of Royal Decree 1887/2011, of 30 December, which establishes the basic organisational structure of ministerial Departments, together with the Royal Decrees which develop their basic organisational structures.

The distribution of staff in the General State Administration has been studied. According to the Central Personnel Registry (RCP), in January 2012 the State Public Administration comprised 457,596 officials, 113,063 contractual staff and 11,202 from other groups, making a total of 581,861, including the Security Forces and Corps, Armed Forces, the justice system and public corporate entities.

The most recent major Civil Service reform took place almost six years after the approving of the Spanish Constitution. It established an administrative career model based on the classification of posts in an attempt to reduce the preponderance of the Administrative Corps.

It was not until 2007 that the Basic Statute of Public Employees (EBEP) was published as a comprehensive and cohesive text of rights and duties (similar to the Statute of Private Sector Employees) with the aim of bringing public employment into line with the situation at the time and Spain's immediate needs.

In view of the above and of the aim of the Sub-Commission for Management of Common Services and Resources, **proposals need to be formulated on some issues related to Human Resources**, as described below and completing, in a specific manner for some areas, the strategic measures in public employment contained at the start of this report.

## A. TRAINING OF PUBLIC EMPLOYEES

### Present situation

Article 14 of the EBEP states that the individual rights of public employees include the right to continuous training and the permanent updating of their knowledge and professional skills, preferably during working hours. Linked closely to this is the right to professional career advancement and internal promotion. For this purpose, Public Administrations promote the updating and improvement of the professional qualifications of their career staff. In accordance with these rights, the EBEP also establishes the duty of public employees to maintain their training and qualifications up to date.

Human Resources Sub-Directorates are also responsible for creating personnel training plans. In this case, invitations by Sub-Secretariats are only open to the employees of each ministerial Department.

### Proposal

It is proposed that **the National Institute of Public Administrations (INAP) should provide electronic training to all ministerial Departments relating to the common modules** which are currently taught through Sub-Secretariats, with specific training being the exclusive responsibility of each department.

## B. COOPERATION BETWEEN TRAINING CENTRES

### Present situation

**The Centre for Financial and Commercial Studies (CECO)**, a non-profit state public sector foundation attached to the Ministry of Economy and Competitiveness, includes among its general aims the promotion and development of professional and business training in every activity related to the economy and national and international trade.

One of the aims of the Institute of Fiscal Studies (IEF), an autonomous body attached to the Ministry of Finance and Public Administration, is the promotion of teaching and research in disciplines related to Public Finances and Financial and Tax Law, cooperation with other national and international centres and institutions devoted to the study of tax systems and public expenditure, and the training of specialists in specific areas of Public Finance.

The transfer of the CECO's activity from its current premises to a new publically-owned location, **the IEF**, will produce both savings in the current rental charges of CECO's headquarters and an academic partnership between the CECO and the IEF. This will provide the material and physical conditions necessary for the CECO's teaching and educational work to be established at the premises of the IEF and for there to be cooperation between the two in training programmes.

### Proposal

**The IEF should temporarily transfer various spaces in its premises for use by the CECO.** It should also be agreed that part of its facilities and offices should be shared so that both the CECO and the IEF may perform their educational and administrative work associated with this.

## C. WORK ALLOWANCES

### Present situation

Present regulations on travel expenses are contained in Royal Decree 462/2002, of 24 May. Its provisions on allowances for travel expenses state that every secondment will give entitlement to travel at state expense under certain conditions according to the group this pertains to: by plane: tourist class; on high-speed trains: first group, business class; on night trains: first group, 2-bed cabin; and on regular trains: first and second groups, first class. With regard to **the use of private vehicles and other special means of transport**: in emergencies, taxis, and only when regular means of transport are clearly inadequate. However, since the above Royal Decree was published, new instructions have been created, modifying the working conditions established in this legislation. These include the following:

**Agreement of the Executive Committee of the Inter-Ministerial Remuneration Committee (CECIR) of 19 November 2007**: In the light of the situations observed following the application of the Sixth Additional Provision of the Royal Decree, it is agreed in exceptional cases to deconcentrate powers in the Sub-Secretariats of Ministerial Departments, both with regard to the secondments of Ministry personnel and those of the autonomous bodies which depend on the Ministry.

Since 2007, all ministerial Departments have created instructions which, although differing, have established the conditions for the allowances to which public employees are entitled for secondment travel. These have downgraded the previous instructions of the Sub-Secretariats. The key reduction affects the conditions enjoyed by civil servants from the first group together with the journeys made by official delegations.

### Proposal

In the area of **work allowances**, it is deemed necessary to **publish instructions** on austerity criteria with regard to business trips. These should be common to all state employees, so that conditions are homogenised and the savings made up to now are either maintained or increased.

## 4. INFORMATION SYSTEMS AND E-GOVERNMENT

### Present situation

A working group was created to obtain information from the various agents involved in Information and Communications Technology (ICT) in the State Administration. This group was coordinated by the State Secretariat for Telecommunications and the Information Society, which reports to the Ministry of Industry, Energy and Tourism. Analysis has focussed on the ICT area of the General State Administration, although it includes references to the experiences of private companies, Territorial Administrations and those of other countries.

The current organisational structure of ICT in the General State Administration is based on multiple ICT units which provide direct services to the bodies on which they depend, on ICT units which provide general services to the former and on a basic structure of governance which coordinates the actions of all of them and defines ICT policies in the area of e-Government. The size and institutional structure of these ICT units is highly varied and ranges from large to small ICT-dependent units and specific bodies of the General State Administration.

According to the latest report on the ICT Budgets of the General State Administration published by the e-Government Observatory, the ICT budget for the General State Administration in 2012 was 1.509 billion euros. The total for ICT expenditure and investment in the General State Administration was 1.164 billion

in 2012 and the budget for Item 1 of ICT personnel was almost 344 million euros, although its distribution is highly heterogeneous among the different ministerial Departments.

Following analysis of the present state of ICT in the General State Administration, the principal conclusions were:

The present organisation of ICT in the General State Administration is complex and heterogeneous. There is a large degree of atomisation and independence when providing services. This has meant that many ICT units have not attained the size needed to take advantage of the benefits deriving from economies of scale. An “island” organisational model has developed with the inefficiencies that this involves, and now that the technology enables it, there should be evolution towards a more centralised model in the providing of certain horizontal services.

Given its present state of maturity, ICT has become a cornerstone for the reform and transformation of the General State Administration as it generates efficiencies and optimises resources, although to do so it is necessary to modify current Administration procedures and structures. Indeed, the reform of ICT management to attain its full potential must be accompanied by a thorough review of the procedures and organisation of the General State Administration, particularly those which correspond to horizontal units.

The current structure of governance of ICT in the General State Administration does not allow a unified strategy and vision in order to facilitate the optimisation of resources and cost-saving. Fresh impetus is needed in this area, based on efficiency and quality of service and the leadership to implement it, and this requires new governance.

Nor does atomisation favour the design of procurement systems capable of achieving significant savings, with the current contracting process suffering from a lack of flexibility which prevents it from taking advantage of the current state of maturity of the Spanish ICT sector. Moreover, atomisation has given rise to a wide variety of suppliers and these results in higher maintenance and evolution costs. The contracting process must be streamlined.

However, ICT units of the General State Administration have been able to meet a growing demand for services and high demands, which have placed the current offer of services at levels equal to or greater than the EU average. Because of the multiple casuistries produced which must be developed in terms of each unit in order to offer services to citizens, it is necessary for there to be a particular Department which knows the specific processes and is close to the ground. It is necessary to retain sectoral ICT units, which benefit from the high training and knowledge of ICT personnel to develop and operate the specific sectoral applications of each business unit.

The foundations for inter-operability and security frameworks have been laid and the architectures and common services created for use both by the General State Administration and other Administrations. However, there is no effective reuse by the different ICT units of what other units have developed, nor is there reuse of the services which each unit creates to meet its needs. Consolidation processes have begun and these may be considered the germ of an overall process, but this is a movement which needs to be strengthened.

In conclusion, **organisational streamlining and the generation of economies of scale require work on centralisation. The organisational structure of ICT in the General State Administration shows a dispersal of resources and decision-making centres and this increases the costs of providing services.** Finally, the structure of governance with which ICT is currently run originates from when ICT began to be deployed in the General State Administration and it suffers from the great difficulty of leading a single strategy.

The units comprising the General State Administration utilise ICT assets to improve their internal productivity and provide services to citizens. These assets may be classified in five major categories:

1. Common infrastructures (communications and networks, data processing centres).
2. Productivity and workstation tools (equipment, licences, LAN —Local Area Networks—, USC —User Support Centres).

3. Common applications (common e-Government modules, ERP —Enterprise Resource Planning systems—, CRM —Customer Relation Management—, web publishing systems).
4. Sectoral infrastructures.
5. Sectoral applications (applications belonging to the area of public action of each organisation).

The following table has been created from the information collected by the working group. It displays the functional distribution of the expenditure of ICT units between the various components and services provided by ICT units:

Category of ICT Assets	Chapter 2	Chapter 6	Total	Total	% Personal
1. Common infrastructures	344.436.492	324.067.911	668.504.403	51.41%	18.26%
2. Workstations	106.431.496	45.557.477	151.988.973	11.69%	13.45%
3. Common applications	26.871.314	36.258.605	63.129.919	4.85%	11.04%
4. Sectoral infrastructures	98.866.326	19.205.241	118.071.567	9.08%	10.52%
5. Sectoral applications	99.608.372	199.016.737	298.625.109	22.97%	46.74%
<b>TOTAL</b>	<b>676.214.000</b>	<b>624.105.970</b>	<b>1.300.319.970</b>	<b>100%</b>	<b>100%</b>

## Proposals

### 1<sup>ST</sup> CONSOLIDATION OF COMMON INFRASTRUCTURES

This initial measure is intended to **relieve ICT units of the responsibility for those services which are identified as common** and which may be offered with greater guarantees and efficiency in a centralised manner. This would allow resources to be focussed on the offer of services by the organisations to which they belong. It seems logical, therefore, that a prime aim of the streamlining measures to be implemented in the short and medium term to increase efficiency in the management of ICT in the General State Administration should be **to evolve towards models of service provision and common infrastructure deployment which aggregate demand for them**, eschewing the silos model used up to now. Consolidation would affect **communications and networks and data processing centres**.

### 2<sup>ND</sup> CONSOLIDATION OF PRODUCTIVITY AND WORKSTATION TOOLS

**Centralised management** of workstations y peripheral devices, and **homogenisation** of applications and equipment for different user profiles.

### 3<sup>RD</sup> CONSOLIDATION OF COMMON E-GOVERNMENT MODULES

Defining of a **catalogue of common** centralised e-Government services. Unification of the web publishing systems of the General State Administration.

### 4<sup>TH</sup> SUPPORT FOR ICT PROCUREMENT

Creation of a **specific Department** within the anticipated new centralising agency for horizontal ICT services and infrastructure. This would be specialised in market research, trend analysis and definition of



the scope of needs, for transfer to the Directorate-General for the National Heritage, which will implement procurements.

## 5<sup>TH</sup> NEW ORGANISATIONAL MODEL FOR ICT IN THE GENERAL STATE ADMINISTRATION

Creation of the position of **Chief Information Officer (CIO)** to **head this area in the General State Administration** and lead the process of change and articulate government policy on ICT for the General State Administration. Design of an **Agency** as the body responsible for consolidating and developing a catalogue of horizontal services and infrastructures for the provision of common ICT services to the Administration as a whole.

## 6<sup>TH</sup> NEW MODEL OF GOVERNANCE FOR ICT IN THE GENERAL STATE ADMINISTRATION

In the new model proposed, responsibility for the creation of the General State Administration strategy would lie with the CIO, who would design it with the aid of a **Steering Committee**, comprising the CIO of the General State Administration who presides it and by each of the CIOs of the Ministries. Those responsible for the major ICT management centres of the General State Administration would also form part of the Steering Committee.

## 7<sup>TH</sup> MECHANISMS FOR INCREASING EFFICIENCY IN ICT SECTORAL DEVELOPMENTS

Within the infrastructures and sectoral services, the proposal is in line with **encouraging the sharing and reuse of infrastructure and sectoral applications and promoting the creation of applications under this model**, from the start adopting standardisation and a particular technology strategy which favours this process. To do so, it will be necessary to create a catalogue and a common repository which enables any unit to be checked in the face of a specific demand if an application has been designed in the General State Administration which may be used for this purpose.

## 8<sup>TH</sup> GENERAL COMMISSION TO THE NATIONAL MINT (FNMT-RCM) FOR THE PROVISION OF ELECTRONIC CERTIFICATION SERVICES TO THE GENERAL STATE ADMINISTRATION

This will **reduce the effort, time and resources employed by the Departments, commissioning bodies and of the FNMT itself, as well as the total cost for certification services**. It will also allow the services provided by the FNMT to be homogenised for the General State Administration as a whole.

## 9<sup>TH</sup> CONNECTIVITY IN SCHOOLS

The ultimate aim of the Project is to **connect all Spanish schools to the internet** through fibre optics.

The above measures are principally intended to take advantage of the current consensus among all the relevant actors and to review current policy and the bodies involved in the contracting and procurement of ICT equipment, seeking to aggregate demand so as to benefit from all the advantages of economies of scale, **streamlining and including effective controls and promoting budgetary centralisation**. According to estimates by the EC in the recent review of the Digital Agenda for Europe, ICT could reduce the Administration's internal costs by 15% -20%.

Streamlining measures are independent of the organisational model of the ICT in the General State Administration and are suitable, whatever this model may be, for improving efficiency in the use of technologies in a complex organisation and producing savings in the short and medium term.

A simplified debate focussed solely on ICT savings can have very negative consequences due to the huge impact of ICT on other operating costs of the General State Administration. There should be due

analysis of the efficiency and impact of ICT spending, as an essential element for seeking the savings in management needed, maintaining as a principle of action never to halt the process of benefiting from ICT to achieve those significant corporate savings.

However, to carry out the proposed strategy it is necessary **to redesign the current organisation by creating a structure of governance which makes it easier to achieve the aims of consolidation and management of common resources**. This model proposes the creation from the outset of **the position of CIO of the General State Administration as the head of the Administration in the ICT field**. Subsequently, it is necessary to assess **the creation of an Agency responsible for consolidating and developing a catalogue of horizontal services** for the provision of common services to the Administration as a whole as well as streamlining the development of infrastructure and sectoral services. This model will achieve economies of scale by consolidating infrastructures, services and procurement.

This structure would allow more effective management of ICT in the General State Administration through **the consolidation of infrastructures and common services** (data processing centres, internal communications networks, voice and data communication) and the integration of ICT at the highest level in all developments, regulatory and otherwise. Equally, it would help to establish and adopt a comprehensive ICT strategy throughout the General State Administration. The model creating the proposed Agency could also possess the advantage of being supported by a large ICT service provider in a sectoral area which would also offer an ideal environment for testing all solutions and common services, prior to its adoption by the General State Administration as a whole.

Organising ICT in the General State Administration will also require consideration of **a redesign of the ICT personnel structures of Departments** and the defining of those functions to be performed by General State Administration personnel which must be supported by external companies, rearranging the relationships between work positions according to the functionalities anticipated.

**A principal strength of the current ICT management model in the General State Administration must be enhanced and taken maximum advantage of**, viz. the existence of a corps of civil servants who specialise in ICT management and possess a high level of technical training and knowledge of the business.

Responsibility for creating the ICT strategy of the General State Administration would lie with **the CIO who would design it with the Steering Committee (comprising the CIO of the General State Administration, who presides it, and the CIO of each Ministry and of the major ICT management centres of the General State Administration)**.

To ensure the success of the implementation of the process, **this must initially be focussed on small and medium ICT centres**, because in the major centres (National Agency of Tax Administration (AEAT), Social Security Information Technology Management, State Public Employment Service etc.) integration between their infrastructures and the sectoral services commissioned is so close that short/medium term actions may plunge these functions into crisis. In any event, the exporting of the successful models of these centres to the General State Administration as a whole will be enabled thanks to the new system of governance. In addition, these centres will use and provide common services and will progressively adopt the models, standards and guidelines which result from the process, once they are consolidated, tried and tested.

## 5. REAL ESTATE

### Present situation

Royal Decree-Act 12/2012, of 30 March, which introduces various administrative and tax measures aimed at reducing public deficit and which modifies Act 33/2003 on Public Administrations Property, establishes the Financial Coordination Committee for Real Estate and Property Transactions (CCFAIP), and its Standing Committee (CPCCFAIP) as the inter-ministerial collegiate bodies to assist the Ministry of Finance

and Public Administration in coordinating the management of administrative buildings, the approving of guidelines and the adoption of measures for a more efficient and rational use.

For its part, the 2012 National Reform Programme (PNR) approved by the Council of Ministers and dated 27 April 2012, refers to the Integral Plan of Management of Real Estate Assets of the General State Administration and indicates that this Plan would be approved in 2012 and would define the homogenous criteria for assessment of property, asset management, occupation of spaces and planning of projects, works, general maintenance and repair services.

Within the framework of the Plan for the Rationalisation of National Real Estate Assets 2012-2020 (PRPIE), which was initiated as a consequence of the austerity measures and fiscal consolidation introduced by the Government during the development of the PNR, the CCFAIP was constituted on 8 May 2012. Its President, the Ministry of Finance and Public Administration (MINHAP), stressed the importance of the Committee which was formed for two key reasons: the need for the public sector to transmit trust and credibility and the need to go beyond traditional approaches in terms of savings and propose an in-depth change to the management model of the State's real estate assets.

The plenary session of the CCFAIP has established **five Priority Lines**:

1. Creation of a precise diagnosis of the present situation with regard to real estate assets, supported by the Information System for Real Estate Management (SIGIE) application.
2. Reduction of leases, both in terms of price and in surface area, either of current ones and new ones proposed.
3. Optimisation of the occupancy of space through the reduction of the occupancy ratio of surface area per unit, which must be closer to that used by private companies.
4. Increase in public revenue with the alienation or occupation of idle property. Specific study of rural land.
5. Construction of self-financing equipment in the medium term: those transactions which involve large cost savings and obtaining of revenues will be studied.

Below is the analysis carried out by CCFAIP for each of these lines:

1. With regard to Line 1, the SIGIE is an application developed by the Directorate-General for the National Heritage after gathering data from all departments and public bodies in 2012. This data, once refined, will **reveal the management and usage of real estate**. It also includes its maintenance costs.

In the second phase, the aim is for SIGIE to include data on the real estate of Autonomous Regions and Local Entities and their bodies in order to carry out joint monitoring of this database.

2. With regard to Line 2, and the plan for **reduction of leases**, a document entitled Leasing Policy has been approved. This provides guidelines for action with respect to the creation of new leases, lease renewal and existing leasing contracts. In addition, the reduction of the total number of leases has been analysed as a consequence of the plan implemented.

3. With regard to Line 3, and the plans optimising the use of public real estate, the work undertaken has consisted of **defining reference ratios** which provide an objective view of the effectiveness of the occupancy in all property which comprises the state's real estate assets, with the aim of making proposals for relocating properties where occupancy is inadequate.

To this end, property for administrative use is classified according to the degree of occupancy in properties with adequate and inadequate occupancy. Reference occupancy ratios have also been defined in occupied property divided in terms of type of building: historic buildings, with load-bearing walls, or with free/functional flooring. This initial classification of building stock will serve as a basis for the drafting of relocation proposals which pursue aims such as the reduction of occupied space, amortisation of leases and

the replacement of leases in areas with contracts which are close to extinction by others in lower-income urban areas or in existing buildings.

4. With regard to Line 4, **on increasing public revenue**, the Plenary Session of the CCFAIP on 8 April 2013 decided to create a **Programme for Valorisation of National Real Estate Assets**, which contains the plans for the alienation of buildings corresponding to the major management centres of the state's real estate assets.

In accordance with this decision, the programme—which will be submitted to the Standing Committee of the CCFAIP shortly— integrates or groups the plans which correspond to the following managers of real estate:

- Directorate-General for the National Heritage (DGPE).
- Institute of Defence Housing, Infrastructure and Facilities.
- Department of State Security Infrastructure and Facilities
- Administrator of Railway Infrastructure (ADIF).
- General Social Security Treasury (TGSS).
- State-Owned Industrial Holding Company (SEPI): Post Office and SEPIDES.

This document contains **15,135** transferable properties distributed by body as follows:

- Directorate-General for the National Heritage: 5.107.
- Institute of Defence Housing, Infrastructure and Facilities: 8.170.
- Department of State Security Infrastructure and Equipment: 96.
- Administrator of Railway Infrastructure: 1.514.
- General Social Security Treasury: 117.
- SEPI: 131 (Post Office Group 112 y SEPIDES 19).

5. Line 5, the **constructing of self-financing facilities in the medium term**, consists of studying those transactions which involve large cost savings and generation of revenues and will be developed in forthcoming years.

## Proposals

Real estate management of the buildings attached to the General State Administration is traditionally centralised in a single inter-ministerial body but coordinated by the DGPE, which simplifies and rationalises management, adding undoubted advantages resulting from economies of scale. The State's real estate assets in early 2012 may be characterised as follows: a lack of accurate and updated information, large dispersal of offices, high leasing costs, reduced occupancy levels and unused assets. The approving of an action plan as embodied in the PRPIE, with the establishment of five priority Lines of Action, has enabled aims to be set and their compliance assessed. Below is a diagnosis of the current situation in relation to the five Lines contained in the PRPIE:

1<sup>st</sup>. With regard to Line 1, improvement of the SIGIE application, it is necessary to have precise knowledge of the real estate possessed, not only by the General State Administration but also its Public Works, both leased and rented. Accordingly, the aims indicated in the PRPIE (**that all real estate is loaded onto the SIGIE**, including property located abroad, and that all information about assets loaded in the application is duly completed) are considered correct although the **convenience of setting a deadline for completion of the work** should be assessed. In the documentation distributed at the most recent meeting it was found that the inventory of the state's real estate assets, including its Public Works, and high-level institutions, is 17,210, although not all are loaded onto the SIGIE, a task in which progress is being made month by month.

2<sup>nd</sup>. Moreover, and with regard to Line of Action 2 of the PRPIE, **reduction in expenditure on leases**, a significant effort has been made in the initial months of work by the CCFAIP to streamline this, as 23% of property devoted to the administrative needs of Public Works and 9% of the property devoted to such uses by the General State Administration is leased. The savings made up to May 2013 amounted to 40.8 million euros, both in properties pertaining to the General State Administration (26.8 million) and its Public Works (14 million euros). The Line of Action aims clearly for a **20% reduction in expenditure on leases in two years**, a goal that is considered appropriate.

Savings in expenditure devoted to leases has been the Line of Action which has produced the fastest and most visible results. Of those 1,405 lease contracts which existed at January 1, 2012, there has been action on 332, with an objective saving of 61.7%. In addition, the document distributed entitled "Leasing Policy" deserves to be valued very highly. It gives clear instructions for action in relation to three possible situations which managers have to deal with: formation of new contracts, renewal of leases and existing leases.

3<sup>rd</sup>. Line 3 of the PRPIE, **optimising the use of space**, set the clear aim of **reducing the occupancy of spaces by 20% per unit**. To do so, it has become necessary to classify the property as described above and distinguish between: that of a historic type, with the structure of load-bearing walls, and property with free/functional flooring. Progress has been made by approving the reference ratios and 151,219 sq. m. has already been freed up since the start of the Plan.

Furthermore, and in order to improve the optimisation work in progress, a document referring to "Reference indices for occupancy of property for the administrative use of state assets" has been created. This formulates proposals by distinguishing between already occupied buildings and new actions. From other perspectives, property optimisation has advanced in improving information about available properties, through their inclusion in a **database which all real estate managers may access** through a website (SIGIDISP).

4<sup>th</sup>. Line of Action 4, **increasing public revenues**, is embodied in the following aims: to identify significant transactions involving alienation or use; to mobilise and valorise rural State properties, through their alienation or transfer for land use to farmers, local councils and regions; to expedite the alienation process and study ways to incorporate specialised technical assistance.

In the period of validity of the PPRIE, the cumulative revenue from alienations up to May 2013 totalled 88.57 million euros: 10.17 million from the DGPE, 75.99 million from the Institute of Defence Housing, Infrastructure and Facilities (INVIED) and 2.41 million from the Department of State Security Infrastructure and Facilities (GIESE).

To this end, reference should be made to the decision by the DGPE by which instructions are given to promote the alienation of rural land assets belonging to the General State Administration, together with the draft of the **Programme for Valorisation of National Real Estate Assets** which will be approved shortly by the Standing Committee of the CCFAIP.

## 6. LIQUID ASSETS

### Present situation

It has been found that there is an important field of action related to the expenditure-revenue resulting from the management of the liquid assets of public bodies, insofar as correct management of the liquid assets administered by the different public organisations and bodies can give rise both to a reduction in expenditure and, mainly, to an **optimisation of revenues, through the centralisation of collection and payment, the unified management of liquid asset funds, the improvement of collection management**, etc. This is of particular importance given the liquidity requirements of Public Administrations.

The following action has been undertaken principally:

- Consultation with the bodies which are most directly affected by the measures.



- Request for documentation for subsequent analysis (by the Secretariat-General of the Treasury and Financial Policy).

With regard to the field of action, in principle this has been restricted to the state public sector, defined in accordance with Article 2.1 of the General Budgetary Act 47/2003, of 26 November. However, some measures may subsequently be transferred to the Regions.

## Proposals

The fields of action identified are the following:

### 1<sup>ST</sup> PAYROLL CENTRALISATION

Payment of the salaries of the active personnel of the General State Administration is regulated by Decree 680/1974, of 28 February, which provides for payment through the account of the corresponding processing banks which hold the funds in private accounts prior to payment. Article 3.2 provides for the transfer of the corresponding sums to each account five days prior to expiration.

Payment could be made through the «mass payment» procedure (Resolution of 30 April, jointly by the General Intervention Board of the State Administration and the Directorate-General of the Treasury and Financial Policy) which is currently used for payments such as grants, emancipation income etc. While this also uses an intermediate cashier, it is a single one, with the account located in the Bank of Spain and administered by the Secretariat-General of the Treasury and Financial Policy (SGTyPF).

The use of this procedure would avoid the outflow of funds from the Treasury to the accounts of the processing banks and could save 6 million euros, which is the difference between the issuance costs and the returns obtained from Treasury liquidity auctions (the auction being carried) together with the reduction in management costs as a consequence of the closure of 132 accounts in private banks.

### 2<sup>ND</sup> CENTRALISATION OF LIQUID ASSET ACCOUNTS

The Secretariat-General of the Treasury and Financial Policy has identified a total of 4,823 accounts which belong to organisations pertaining to the General State Administration together with the autonomous bodies and Agencies which depend on it. 423 of these are to be found in the Bank of Spain and, beyond it, 3,163 domiciled in Spain and 1,237 abroad.

Furthermore, as of October 30, 2012, a significant overall balance has been detected in the accounts located beyond the Bank of Spain whose authorisation corresponds to the Secretariat-General of the Treasury and Financial Policy. Together with the dispersal of the accounts, this raises two problems: the lack of adequate regular information about them and the mismanagement of balances.

The following action is proposed:

- a) The creation of a situation map, which ascertains **the exact reality of the liquid asset accounts of the General State Administration and of the rest of the state public sector.**
- b) **The centralising of the liquid asset accounts of the General State Administration and of the other entities of the state public sector**, with contracting concentrated in a selection of 2-3 banking entities.
- c) **The conformation of the position of the State Treasury** with the accounts both in the Bank of Spain and in these 2-3 entities.
- d) **The improving of existing information on the management of liquid assets by bodies and entities** through normalisation and standardisation of the information relating to current accounts. It is possible



to employ auditing to achieve this, in the case of the bodies which avail of a Delegated Comptroller, or otherwise through the supply of accounting information.

- e) Precise **regulatory modifications** to carry out the above action.

### 3<sup>RD</sup> IMPROVING THE MECHANISMS FOR COLLECTING TAX AND NON-TAX REVENUES

The regulations for forming contracts with Public Administrations and for receiving public aid establish as a requisite that there should be no outstanding payments due to the tax authorities and the TGSS. However, the time which elapses between the processing of the public expenditure and its actual payment means unsurprisingly that public credits are being paid to Public Administration debtors.

For this reason, it is necessary to have a **computerised mechanism** where the collection bodies of the different Public Administrations may **view the different budgetary payments** to be made and agree their attachment or set off.

**Two aims would be achieved** with this: the first, **an increase in revenues**, and the second, where no **public credit is allowed to anyone who is behind in payments to any Public Administration**.

Accordingly, with the aim of improving the mechanisms for the collection of tax and non-tax revenues, **it is planned to create a neutral point** where there would be a crossing of Public Administrations payments and the executive action which Public Administrations themselves may take against those who are simultaneously creditors of such payments and debtors of any of them. The Tax Agency would assume the tasks involved in implementing the computerised platform in which information exchanges would take place from which attachment orders could result.

From the legal viewpoint, it has been proposed to **incorporate an additional provision in the Draft Law on electronic invoicing and single registration of invoices** which enables the AEAT, the collection bodies of regions and local councils, the TGSS and the paying bodies of the Public Administrations to exchange information on their debtors and on the holders and beneficiaries of payments from such Administrations, with the aim of making the appropriate attachment or set-off.

This operation, which would be subject to regulatory rules, would involve Public Administrations, before paying their suppliers, being obliged to send to the Payment Information Hub identification about each supplier and the sum to be paid. Two/three days must elapse before proceeding with payment.

The collection bodies of the corresponding Administration would send information on each of its debtors to the Payment Information Hub daily (or as often as is decided).

The Payment Information Hub would inform the attaching entity daily if there is a credit in its debtor's favour, its amount and the identity of the paying entity. The Tax Administration must send the Payment Hub an attachment notification/set-off agreement for the corresponding sums in the following two days.

The Payment Information Hub must respond to the paying Public Administration by indicating the list of payments to have been attached, the identity of the attaching entity, the amount of the payments accepted by the attachment and, when appropriate, the account into which payment must be made, with the rest of payments being released.

The regulations will establish the procedure to be followed when a debtor has debts simultaneously with various attaching bodies, when the payment to be made is insufficient to cover the debts in full and when the Payment Hub has received various attachment notifications /set-off agreements on a particular payment.

### 4<sup>TH</sup> IMPROVED ADAPTATION OF THE REVENUE SCHEDULE TO THAT OF GENERAL STATE ADMINISTRATION PAYMENTS

Improved adaptation of the revenue schedule to that of the payments of the General State Administration could help improve the management of liquid assets. For each day that the collection of tax revenues

is brought forward the Treasury estimates that the **saving produced would be significant** (the difference between the issuance cost and the returns obtained in Treasury liquidity auctions (the auction being carried)).

In addition, in January, July and August the Treasury displays considerable liquidity dips which, on being corrected, should increase the safety net in liquid asset management, thereby assuming both unexpected payments and lesser issuances more comfortably, with the resulting impact on the financial burden of forthcoming years.

## 5<sup>TH</sup> AVOIDING THE ACCUMULATION OF THE SURPLUS LIQUID ASSETS OF STATE PUBLIC SECTOR ENTITIES

This measure is intended to **amend the regulations of those state public sector entities which maintain surplus liquid assets** with the aim of those revenues which exceed their financial needs being paid periodically into the Treasury. Apart from the positive effect on the Treasury of making these payments, this removes the perverse incentive that the maintaining of these sums supposes insofar as it encourages the spending budget to be raised in line with liquid availabilities, instead of keeping it tailored to its management needs.

In a recent report by the Court of Auditors (April 2013) on the General State Account of 2010, the Government is urged to avoid the current high liquid asset surpluses and their preferential use in the creation of budgets by state autonomous bodies.

## 6<sup>TH</sup> APPROPRIATION IN OFFENCES AGAINST PUBLIC FINANCES (DCHP)

It is proposed to modify regulations with **the aim of settling and collecting through administrative channels the sums defrauded through offences against public finances** (DCHP) on their becoming «tax debt» and thereby receiving the revenues through the ordinary channel and avoiding appropriation accounts.

## 7<sup>TH</sup> IMPLEMENTATION OF THE VIRTUAL OFFICE OF THE GENERAL PUBLIC DEPOSITARY

As a complement to the other measures indicated, the virtual office of the General Public Depository will be implemented. This will **expedite the processing of the return of guarantees**, together with their presentation to the body for which they should take effect. Furthermore, set-up procedures will be expedited and the consultation system facilitated.

## 7. CENTRALISATION OF SERVICE AND SUPPLY CONTRACTS

### Present situation

An initial approximation of the present state of the Departments was made in order to determine the possibilities of streamlining contractual management by formulating recommendations, with a view to beginning a centralisation process for supplies and common services, and the actions for this to be put into practice.

Information was requested from Ministries and autonomous bodies as the proposals presented are restricted to them. Consequently, Regions and local entities were excluded.

From the information received, it was noted that there are some weaknesses in the organisation and contractual structure of the General State Administration, including:

- The existence of a large number of contracting bodies.

- Very few centralised procurements and therefore a failure to take advantage of the potential to improve. It may be said that there is no collective approach to contracting in the General State Administration.
- The use of diverse contracting procedures and tools, which differ even within each Ministry, especially in peripheral bodies. This hinders their monitoring and control. Variability in the levels of quality of the supplies and services provided.
- In some cases, a lack of those responsible at ministerial level, those who may establish overall rationalisation strategy and savings plans for each of the procurement categories of Item 2 «Current Expenditure on Goods and Services».
- The absence of a single organic chain of contracting authorities, which prevents there being unity of criteria and doctrine.

The experiences undertaken in this field in the past by major national companies and in the Public Administrations of countries like France or the United Kingdom have thrown up some very positive results in terms of economics and simplification of structures.

In addition, the major consultancies which are procurement specialists endorse the positive effects of the procurement centralisation process which, according to their contracting experience, attains savings of 6-13% in current expenditure and over 20% in investment.

The Ministry of Defence's own experience of the procurement centralisation process confirms these savings with regard to current expenditure as well as the beneficial effects of homogenising the level of the provision and quality of services in the Ministry as a whole and helping our suppliers to feel there is a «single customer» in centralised categories.

This is why it is recommendable to align with the best contracting practices and procedures adopted by the most efficient national companies which some years ago implemented the procurement centralisation models and which have produced excellent results.

## Proposals

### 1<sup>ST</sup> NEW ORGANISATIONAL CONTRACTING MODEL

#### Aims

The new model proposes the following aims:

- **To obtain savings and improvements in contracting by increasing transparency. Seeking efficiency.**
- **To homogenise the levels of quality of services and supplies** which are contracted in the General State Administration, in such a way that unjustified differences are not perceived among the different bodies.
- **Simplification of the structure of contracting bodies.**

#### Basic lines

- **Centralised management of the model.** Tasked with the management, monitoring and control of contracting. As well as the implementation of rules and procedures, this includes the creation of the most appropriate contracting strategies for each procurement category and the monitoring and control of the whole process through a command framework.
- Establishing of **joint contracting procedures and tools** for all the Public Administrations.

- Appointment of those responsible for each procurement category who, possessing an overview, co-ordinate, standardise and aggregate the needs of the General State Administration as a whole and plan, programme and control how they attained. The aim is to avoid wasting significant opportunities for achieving savings or for taking advantage of synergies in managing these services and supplies.

## Measures needed to implement the new model

### IN EACH MINISTERIAL DEPARTMENT:

Prior to initiating an inter-ministerial centralised procurement process, there should be:

- A reduction in the number of current contracting bodies.
- A centralising of their procurement as far as possible.
- Integration of all contracting bodies into a single organic chain which enables unification of management, monitoring and control of contracting, together with the centralisation of contractual information.
- Establishing of those responsible for each procurement category in order to create rationalisation and savings plans and to represent the Ministry in the inter-ministerial working groups for the study of the centralisation of procurement.

### AT THE LEVEL OF THE GENERAL STATE ADMINISTRATION AS A WHOLE:

- Establishing of joint contracting procedures and tools for all the Public Administrations which provide support for the whole contracting structure.
- Creation of a contracting strategy for each category of procurement.
- Homogenising of levels of quality and provision of the services which are contracted.
- Appointing of those responsible in each procurement category to create plans for rationalisation and saving at an overall level.

## Selection of procurement categories as a pilot experience

### CRITERION:

For the selection as a pilot experience of one or two procurement categories to be centralised, the following elements would have to be assessed:

- Criticality of the service/supply.
- Potentiality of the saving to be achieved:
  - According to the category.
  - According to the tender sum.
- Complexity of the category/ease of implementation.

### PROCUREMENT CATEGORIES CAPABLE OF BEING CENTRALISED:

The procurement categories which are deemed to be clearly eligible for centralisation in the General State Administration are: office and computer equipment not inventoried (MONI and MINI); fuel; electrical energy; telecommunication services; transportation of materials; travel management service; gas; surveil-

lance and security services; cleaning services; clothing; food; portals and e-mail; insurance premiums; transportation of material; and pharmaceutical products and healthcare material.

It should be noted that although in principle all categories are eligible for centralisation, this may not be advisable for some of them due to the increase in volume in contracting produced, which would reduce competition.

## Phases

The period for the implementation of this new contracting model would be:

1<sup>st</sup> Phase. Implementation

This initial phase would address all the measures indicated in the previous section and include the forming of a general working group.

2<sup>nd</sup> Phase. «Implementation and development»

With all the contracting strategies created, the joint procedures and tools made available, those in the ministries responsible for categories appointed and the levels of quality and provision of the services determined by the Administration established, centralised contracts would be formalised in this phase.

## Action to be taken

The following action should be taken:

- Establishing of a State Administration body to undertake the process.
  - It is proposed to create a Directorate-General for the Rationalisation and Centralisation of Contracts, which reports to the Sub-Secretariat of the MINHAP.
  - Creation of the appropriate regulations to provide it with the powers to undertake inter-ministerial procurement.
- Selection of two procurement categories which serve as a pilot experience for checking the advantages of the project.

The **use of e-tendering** will be increased as an innovation strategy in public procurements. While this project will be developed by the State Agency of the Official Gazette (AEBOE) and the Directorate-General for Centralised Contracts in its different areas of competence, it attempts to cover all existing needs in the Courts, the AEAT, the TGSS and, in general, in Public Administrations as a whole. The aim is to incorporate e-tendering into public contracting and to replace in the legal field face-to-face tendering with the electronic version, which is available 24 hours a day and 365 days a year, leading to the greater dissemination, transparency and control of tendering procedures.

## 2<sup>ND</sup> CENTRALISATION OF THE PROCUREMENT OF MEDIA SPACE

Media space for institutional advertising is contracted in a disconnected manner, which may lead to a lack of homogeneity in contracting criteria and uncertainty over the prices of the services contracted. At present, campaigns are not assessed in order to obtain an overall vision of their effectiveness and efficiency.

The measure now proposed would lead those Ministries, their bodies and other state public sector entities which contract institutional advertising to increase effectiveness and efficiency in the contracting

of these services. They would also adjust and optimise the prices of implementation and obtain greater knowledge of how far the goals proposed in institutional campaigns have been met.

To do so, it is proposed to **centralise the procurement of media space** in order to achieve appropriate support for the institutional advertising of the General State Administration and centralise the ex-post assessment of the effectiveness of the different institutional advertising campaigns.

## 8. CENTRALISED MANAGEMENT OF PROCUREMENT SERVICES

### Present situation

The working method pursued included documentation analysis and working meetings of the DGPE and of the General Inspectorate of the MINHAP.

The field of action was restricted to the state public sector (administrative and business). Regions have not been included because initiatives and proposals related to them are being studied by other Sub-Committees of the Commission.

There are a series of tasks which under different regulations, contract legislation in particular, have traditionally been assigned to the Ministry of Finance and Public Administration (DGPE). These include the organisation and management of a procurement hub (with the aim now being that these will be taken on by the **Directorate-General of Rationalisation and Centralisation of Contracts**), of a contract platform and of a contract register. The intention is to streamline the procurement of goods and services, promote the application of the principle of public access or provide knowledge of the contracts formed for statistical and other purposes. The centralisation of management activities, which on being equal or similar may be undertaken in a unified or coordinated manner, supposes taking better advantage of public resources due to the achievement of economies of scale.

These tasks have been strengthened over these years, with regard to both their regulatory and technical aspects as well as their instrumental ones (computerisation specifically). However, gaps exist in legislation and in practice which prevent these instruments from offering their full potential.

Thus, in the case of the **procurement hub**, and with regard to the procurements which are at present centralised by the Consolidated Text of the Public Sector Contracts Act (TRLCSP), leaving aside therefore the enlargement produced by the application of the measure described in this report's previous section, this Act establishes the obligatory nature of centralised procurement in the General State Administration, its autonomous bodies and the management entities and joint services of the Social Security for a series of products which are described below. The Act extends this obligatory nature to other state public entities but the term's breadth and lack of definition and the lack of an implementing regulation which specifies which entities are involved have led to procurement taking place beyond the hub.

Moreover, again referring to the procurements which are currently centralised, companies, foundations, other state (also non-state) public sector bodies, organisations and entities may join voluntarily. It is appropriate to define in this case which specific bodies are included in the generic terms of "bodies", "organisations" and "entities" used by the Act.

It would be equally desirable to extend the obligatory nature to companies and foundations in a progressive manner.

Furthermore, it is necessary to make progress in establishing the compulsory nature of the sending of orders electronically through the CONECTA-PATRIMONIO application. This represents a significant improvement in the efficiency of the management of the Sub-Directorate-General for Procurement, which is currently dependent on the DGPE, as the contracting hub, and which in the future will be assigned to the Directorate-General for Rationalisation and Centralisation of Contracts. Electronic transfer avoids incidents resulting from the non-automatic mechanisation of orders, it allows instantaneous transmission of orders from any physical location of the requesting body and it accelerates and automates the processing which



takes place within the Sub-Directorate-General for Procurement, all this benefitting the management of contracting by the user bodies in the system.

Under Article 206 of the TRLCSP and the ministerial order on centralisation in force (Order EHA/1049/2008) the Sub-Directorate-General for Procurement of this management centre currently has 16 catalogues, among which are furniture, computer equipment (computers, servers and printers), security elements and systems, air-conditioning, vehicles (cars, industrial and motorcycles) and development services of e-government applications and web hosting. There is also the centralised supply of equipment and systems for the processing of information, in accordance with Article 207 of the TRLCSP and Article 14 of Royal Decree 589/2005, of 20 May, in a more limited subject area. This competence of the Sub-Directorate-General for Procurement (currently dependent on the DGPE and expected to be assumed by the Directorate-General for Rationalisation and Centralisation of Contracts), as the contracting body for procurement of equipment and systems for the processing of specific information, provides the management centre with a complete overview with regard to the technological contracting which results in greater efficiency in the management of both competences.

The main advantages of this contracting model may be summarised by price reduction (with discounts of 15-20% due to economies of scale and the repurchasing of equipment); greater speed in processing; greater competition; greater transparency (through the intervention of a third party removed from the supplier and recipient); and it being constituted in support of the implementation of public policies (environmental protection, quality policies, social policies, etc.).

The figure for savings obtained on purchases made through the centralised procurement system was 28.9 million euros; 20.8 million; and 9.6 million in 2010, 2011 and 2012 respectively. The fall in 2011 and 2012 is due to the reduction in procurements made in these years, due to the budgetary restrictions imposed at the time.

With regard to the **Platform for Government Contracts (PLACE)**, the law establishes the obligatory nature for the whole state public sector, but practice shows that not all the entities have their contractor profile integrated in it, as seen from the following table:

Type	Total	PLACE	Faltan
GSA	13	12	1
Autonomous organizations	64	61	3
Mutuals	24	22	2
Public companies	13	11	2
Other entities established under Public Law	61	34	27
Consortiums	24	6	18
State owned Companies	172	57	115
Foundations	51	20	31
<b>TOTAL</b>	<b>422</b>	<b>223</b>	<b>199</b>

In 2012, these 223 entities generated 17,661 advertisements and another 952 documents on the PLACE; 18,613 documents in all. The average per body is 83 documents.

Finally, the **Public Sector Contract Register (RCSP)**, which is regulated in Article 333 of the TRLCSP, contains the basic details of the contracts awarded by the different Public Administrations and other pub-

lic sector entities. The RCSP is therefore the official information hub on public contracting in Spain, and should be the information point for all those bodies or entities which require information on contracting data.

Specifically, the TRLCSP (Article 29) and the Directive of the Court of Auditors of 26 March 2009 (Official State Gazette of 11 April), with regard to the sending to the Court of extracts from contracting records and the lists of contracts and agreements formed by state and regional public sector entities, establish the sending of information by contracting bodies during and at the end of the year. Part of this information is already held by the DGPE with regard to the state public sector and therefore the effectiveness of the contract register and the contracting platform in establishing themselves as a communication centre with the Court of Auditors may be studied for these purposes.

## Proposals

In view of the above, it is proposed to develop **the TRLCSP in regulatory terms to enable the effective integration of all the bodies in the systems described**. The aim is to make it a more comprehensive contracting platform than the current version so that **improved information may be provided to the Court of Auditors**. If proved to be feasible, it should be the one which channels information on contracts to the Court to replace the contracting bodies. The centralised sending of information favours the application of the principle of transparency and makes substantial savings on the human and material resources devoted to this task in ministerial Departments and other entities.

2,900 contractor profiles are currently integrated into the platform; the number of users of contracting bodies is 7,500 and of businesses, 20,000. The total number of procedures included in the platform in 2011 was 10,000, of which 70% corresponded to General State Administration bodies and their autonomous organisations. The platform is a «unique» point which involves 28,000 users.

**The qualitative aspects of the platform**, which provides services such as the registration, safekeeping and data integrity of all documents housed within it, should also be highlighted; timestamping of documents; advanced search on tenders; subscriptions and messages (e-mail, RSS and SMS); online interaction with the contracting body which enables downloads of invitations to tender, specifications and documents, integration with the Official Register of Tenderers and Classified Companies (ROLECE); use of the platform website for: managing the cycle and publication of tenders, inviting tenders electronically; acceptance/exclusion of tenders and electronic notification of this; request for documentation and electronic communication of the award; and transparent sending of announcements to the OJEU —the Official Journal of the European Union— and the Official State Gazette (except payment).

Similarly, it is appropriate to study the feasibility of the **contracting platform and especially of the contract register also sending information to the Court of Auditors**. This would consist primarily of the transmission of the documentation for the contracts they possess and would replace that sent by contracting bodies today. Currently, lists of contracts are sent to the Court at the end of the year, together with certified copies of contract documents during the year when they exceed the sums indicated in the Directive of 26 March, 2009: works, 600,000 euros; supplies, 450,000 euros; services and special administrators, 150,000 euros; and concessions of public works, of management of public services and of public-private partnership, of any amount. It is important to mention here the savings which may be produced by the centralised sending of information to the Court of Auditors, due to Ministerial Departments and other entities being relieved of this task.

The number of contracts registered in 2011 which corresponded to the state public sector was 34,764, of which 1,439 were for works, 27,554 for supplies, 5,674 for services and 97 for other types. In terms of particular sectors, 14,327 contracts were registered for the following types: 1,197 for works, 8,434 for supplies, and 4,696 for services.

## 9. AGREEMENTS

### Present situation

The Ministry of Health, Social Services and Equality was entrusted with the analysis of the situation and proposals for improving conventional activity in the state Public Sector.

From the information provided by the ministerial Departments with regard to 2012, the proposed different variables have been analysed. These include the type of agreements according to participants, their purpose, financial contribution and its distribution, as well as their duration.

This information, as well as providing some indicative data about the quantitative and qualitative importance of this instrument for developing different public policies at sectoral level, highlights the importance of agreements as a channelling instrument for public spending and the need to adapt its regulation to this importance.

In Spanish law, under the generic reference to the Agreement, two clearly different categories have been considered. Firstly, agreements formed by the Administration with persons subject to private law. Secondly, inter-administrative agreements, i.e. those concluded between Public Administrations and regulated both in the regulations of Public Administrations and in contract law.

The evolution of this legal instrument and its extensive use by the Administration in the case of agreements with persons subject to private law recommended the reformulating of the terms in which its acceptance was recognised, as this fostered not only a lack of discipline over expenditure but also confusion within both its field, which has yet to be defined, and that with regard to contracting.

This introduces the first, clearly delimiting, element of agreements with regard to contracts i.e. their purpose is not contained in contracts regulated by the Public Sector Contracts Act or in special administrative rules.

With respect to the inter-administrative agreement, this will retain its initial configuration until, due to the influence of European Law, it is necessary to prevent its use when its scope coincides with that of contracts—as in this case it is appropriate to create a contract.

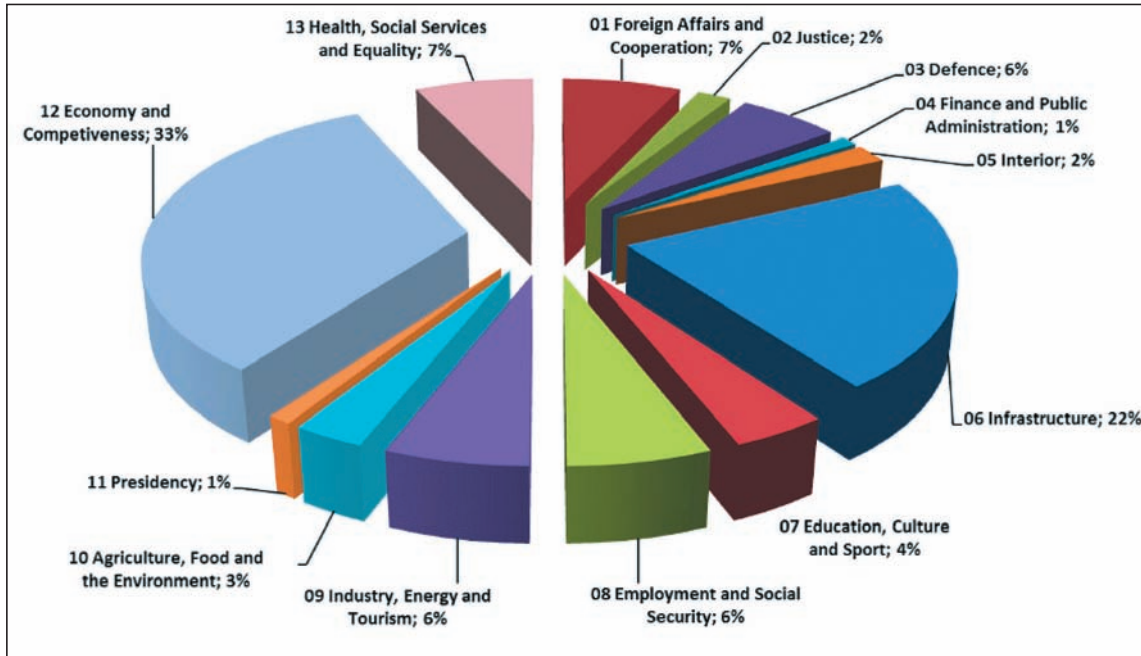
At present, the use of collaboration agreements does not respond to defined areas, as their delimitation from the regulatory viewpoint is made negatively as opposed to other legal instruments (see Article 4.1, c and d, in fine, TRLCSP), so they are resorted to in order to achieve a wide range of aims.

Moreover, collaboration agreements and their content have been greatly influenced by recent policies containing and streamlining public expenditure. This influence has occurred at three levels: budgetary (as a consequence of the reduction of existing provisions in state spending budgets), regulatory (primarily, through the provisions of the Budgetary Stability and Financial Sustainability Act and the General Budgetary Act) and administrative (clarification of competences).

Accordingly, the data obtained from the different Departments shows that, in 2012, more than 7,100 agreements were in force, according to the distribution shown in Figure 1. Of these, most lack economic content (about 64%).

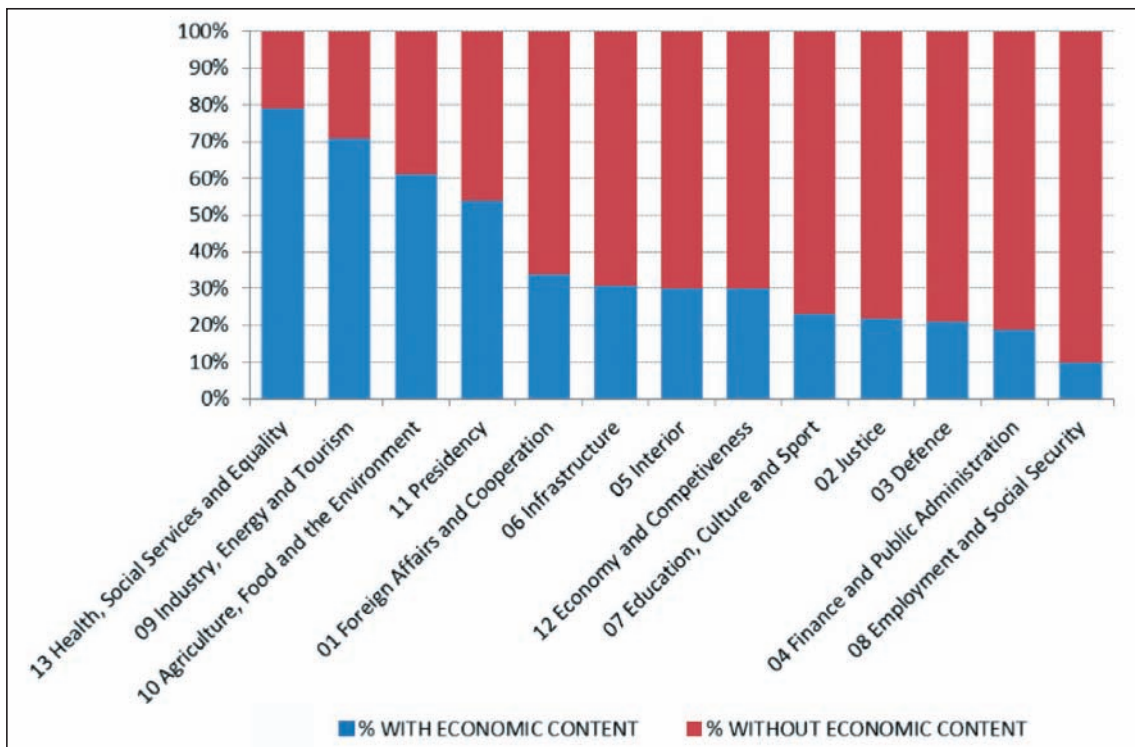
That is, almost 2/3 of the agreements lack economic content and these were signed mainly to establish stable collaboration frameworks, although in some cases they have a specific use. Only 1/3 of the agreements possess economic content, thus it cannot be concluded that the agreement is an element which is devoted exclusively to the management of funds.

**Figure 1**  
% OF EXISTING AGREEMENTS IN 2012 BY MINISTRY



Total number of agreements. 7,112

**Figure 2**  
% OF AGREEMENTS WITH ECONOMIC CONTENT/WITHOUT CONTENT IN EACH MINISTRY



As may be seen, two Departments concentrate over half the agreements signed: Economy and Competitiveness with 33%, followed by Infrastructure with 22%. After that come Health, Social Services and Equality together with Foreign Affairs and Cooperation, with 7% each.

The Departments with the least conventional activity were the Ministry of the Presidency and that of Finance and Public Administration with 1%, and the Ministries of Justice and the Interior with 2% each.

With regard to the specific weight of agreements with economic content in each Ministry, the Departments with the largest proportion of agreements with economic content are Health, Social Services and Equality with 79% of the total; Industry, Energy and Tourism with 72%; and Agriculture, Food and the Environment with 61%.

The Departments with the least number of existing agreements with economic content are Defence with 21%; Finance and Public Administration with 20%; and Employment and Social Security with 10% (Figure 2).

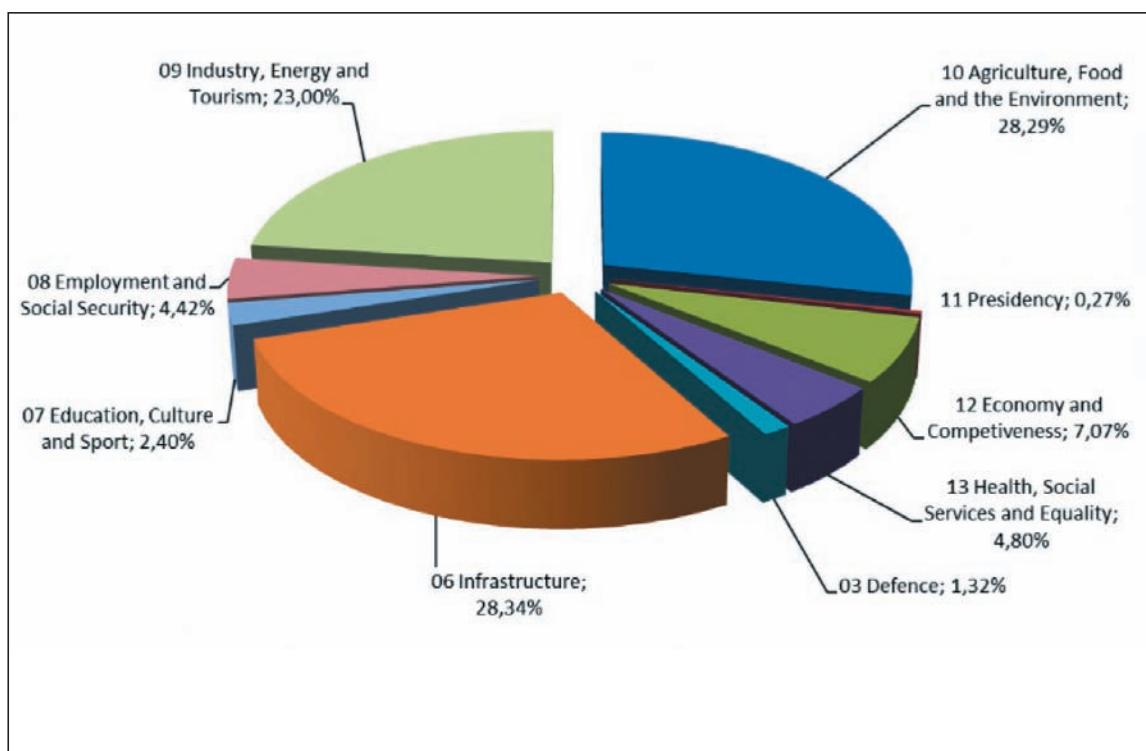
Of the 2,544 existing agreements with economic content, four ministerial Departments embrace around 75% of these: Economy and Competitiveness with 27%; Infrastructure, 19%; Health, Social Services and Equality, 17%; and Industry, Energy and Tourism with 12%.

**Collaboration with entities subject to private law** is particularly important (over 50% of overall spending, channelled by the state Public Sector). The reasons which may help explain this are the existence of numerous agreements with constituent entities in the sector of public companies and foundations which channel subsidies or specific orders, as well as the knowledge that this type of agreement, with persons subject to private law who do not form part of the public sector, can be used as a mechanism for generating synergies which satisfies the public interest with less public spending.

The ministerial Departments which collaborate most with these institutions are the Ministry of Defence with 97%; Infrastructure with 81%; and, to a lesser extent, although above the average of 58%, Economy and Competitiveness with 61%.

This is followed in economic importance by **inter-administrative agreements** and, in particular, those signed with regions and local entities, which receive over 25% of funds (18% and 7% respectively) (Figure 3).

**Figure 3**  
% CONTRIBUTION TO TERRITORIAL ENTITIES BY MINISTRY





Three ministerial Departments draw practically 80% of the **total amount provided by the state public sector to territorial entities (regions and local entities)** in 2012: Agriculture, Food and Environment with 28.29%; Infrastructure with 28.34%; and Industry, Energy and Tourism with 23%.

In terms of the **duration** of the agreements, the majority are multi-year or indefinite. This leads us to conclude that the aim is to establish collaboration formulas which possess stability, mainly through framework agreements lacking economic content, which are defined—including the precise setting of funding—by means of specific agreements formed under them.

With regard to the **predominant activity which forms the purpose of the agreement**, in 2012 this was scientific research, although the largest volume of funds administered was devoted to infrastructure agreements through the Ministry of Infrastructure. The number of agreements on healthcare and social services also proved sizeable.

In any case, it may be argued that there are types of agreements common to all ministerial Departments such as those involving the promotion, development and modernisation of activities; training (studies, courses, seminars etc.), the exchange of data and information (computer applications, access to databases, publications, etc.).

The following **conclusions** may be drawn from the information contained in the preceding paragraphs:

- There is a certain **dispersal of the entities with the power to sign agreements in each Ministry**, a reflection of the atomisation which exists in the state Public Sector at present.
- It may be seen that **the use of the legal term «collaboration agreement» harbours disparate legal realities** which do not always respond to its philosophy (nominative subsidies, assignment for use, investments, leasing etc.).
- **Collaborative formulas seek to generate synergies** between Public Administrations and with the private sector in satisfying the public interest, the participation of entities subject to private law being particularly relevant.
- **A significant volume of public funds** was channelled through the conventional activity of the state Public Sector.
- **Inter-administrative agreements** are of great importance whether they are between ministries, bodies or territorial Administrations. In the latter case, in particular, there is no balance between the contributions of the different Administrations which also have their own funding system and which receive through this instrument over 25% of the funds the state Public Sector mobilises through this.

On this basis, the distribution of funds to these Administrations must respond to clear criteria which reduces discretionality, as the Court of Auditors recommends.

## Proposals

### 1<sup>ST</sup> ESTABLISHING A REGULATORY FRAMEWORK FOR COLLABORATION AGREEMENTS

With the lack of a defined regulatory framework for the content and formation of collaboration agreements in their various aspects, and with the aim of providing their use with greater security and control, **it would be desirable to adopt a rule which regulates: the legal status of collaboration agreements and the way they differ from similar elements, together with the procedure for processing them, particularly if they entail a financial cost for the state Public Sector.**

The principal changes introduced by the new rule could include the need to demonstrate in the processing of the administrative record, among other circumstances, the following: justification of the need for collaboration, absence of more advantageous alternatives to satisfy the public purpose, collaborator's



selection criteria with regard to the sector of activity and the minimum content of agreements (including in the financial aspects the determination of the costs and criteria for allocation of the expenses attributable to the agreement).

This system could be included in the future Act regulating the Legal Status of Public Administrations, which forms part of the general proposals contained in this report.

## 2<sup>ND</sup> CREATION OF AN INFORMATION SYSTEM FOR COLLABORATION AGREEMENTS IN THE STATE PUBLIC SECTOR

In line with the requirements in the area of transparency in the actions of the Administration and in providing elements which facilitate control over conventional activity, it is proposed to **create a database for the state public sector**. This would be maintained by the units responsible for registering the agreements so that, through different levels of consultation, the availability and detail required in terms of the recipient of the information is ensured.

Therefore, an instrument would be made available which would help compliance with the obligation for transparency, without adding to the administrative burden of ministerial Departments.

## 3<sup>RD</sup> ANNUAL CREATION OF A PLANNING INSTRUMENT FOR COLLABORATION AGREEMENTS

It would be desirable to **create** within the framework of the different spending programmes **a plan for collaboration agreements in each Department** (central services and dependent bodies and entities) **on a sectoral basis**. This would arrange and link the aims and purposes to be achieved with collaboration agreements, both from the viewpoint of strategic opportunity, for those with no economic content, and for improving efficiency in terms of existing budgetary availability in each area, for those which involve a channelling of resources. This could range from a mere operational plan of action to a strategic plan, which could even be provided with interdepartmental coordination mechanisms, establishing frameworks for action for all Ministries and their bodies.

## 4<sup>TH</sup> SENDING OF INFORMATION TO THE COURT OF AUDITORS

As in the provisions of Article 29 of the TRLCSP for contracts, it is proposed to **send to the Court of Auditors information on collaboration agreements with an economic impact which exceed a certain threshold**.

This measure would strengthen external control of the conventional activity with economic content in the state Public Sector and transparency in the management of public funds.

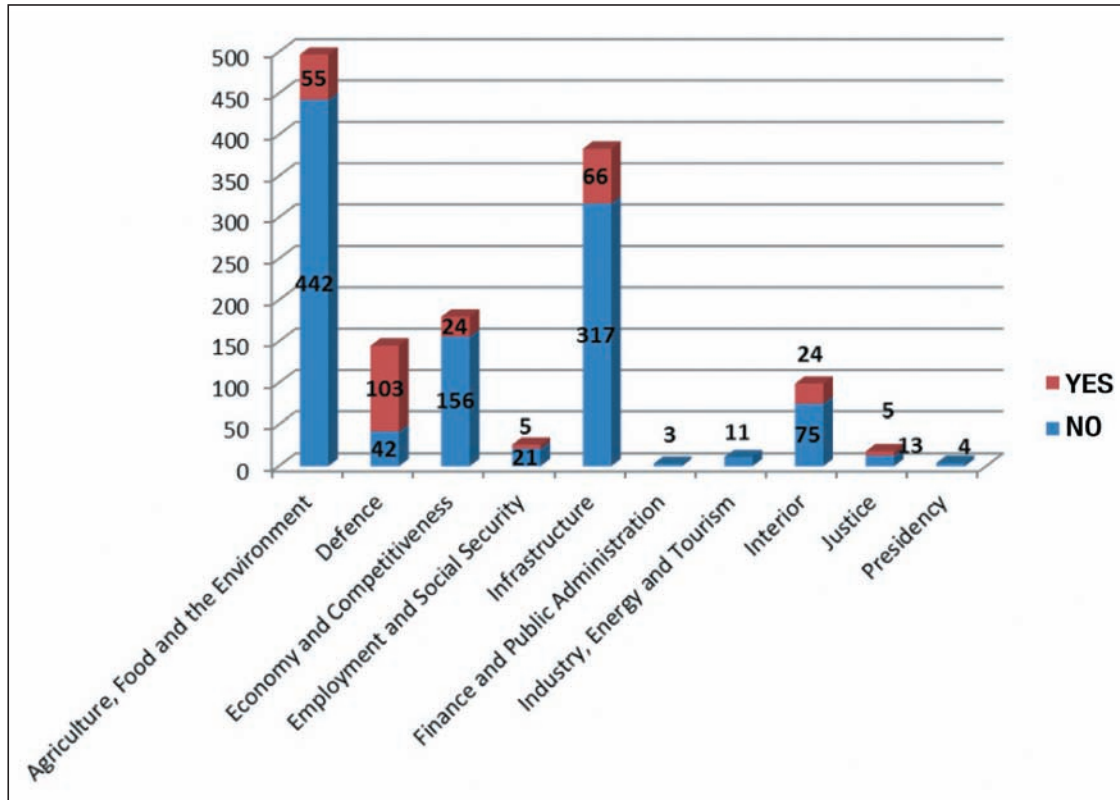
## 10. MANAGEMENT COMMISSIONS

### Present situation

To create this report, information has been collected from the Ministries of Agriculture, Food and the Environment; Defence; Economy and Competitiveness; Education, Culture and Sport; Employment and Social Security; Infrastructure; Finance and Public Administration; Industry, Energy and Tourism; Interior; Justice; and the Presidency, in the understanding that these Departments, in practice, use management commissions the most.

Commissions are considered to be in force regardless of the year they commenced or their duration. Their number is growing year by year: from 9 in 2006 to 50 in 2007, an increase of 389%; from 70 in 2008 to 162 in 2009, a growth of 232%; 215 in 2010, 299 in 2011 and 491 in 2012; up to the date of this report there have been 48 management commissions in 2013. The grand total is 1,366.

With regard to the Ministries which issue commissions, the following chart represents those who most use them, which to a degree is connected with their powers and functions.



Management commissions are resources which are present in the General State Administration. Their use is on the rise.

The Ministry of Agriculture, Food and the Environment issues the largest number of commissions, followed by the Ministry of Infrastructure.

The largest number of management commissions are issued to bodies, entities and companies from the group pertaining to the commissioning Ministry itself (TRAGSA, INECO and ISDEFE, respectively) and they are formalised only sporadically with third bodies or entities.

With regard to the type of commissions, according to the information provided by each Ministerial Department, the largest number is in the group of technical assistance and support; followed some way behind by execution of works; creation of studies, reports and research; and services.

An initial approximation to this data indicates the organisations, entities and companies receiving commissions to be highly specialised, as they possess the appropriate technical means and trained personnel for providing the technical support needed by Ministries and other organisations whose activity is generally more orientated to administrative management. Without this support, the entities which now issue commissions would have to resort to the market for the resources they need, which is inadvisable in strategic sectors in certain cases. Therefore, it is evident that the complementarity of the services provided through management commissions serves to justify them.

With regard to their correct use, it must be said in most cases that there is reasonable coherence between the needs covered by management commissions and their essence. However, experience teaches us that sometimes they are not employed strictly in accordance with their nature, which distorts their specific objective to some extent. **Hence, commissions have been an inappropriate channel for covering the needs of personnel, causing additional and undesirable costs which damage the Administration's interests.** On other occasions, they have been used to avoid contracting procedures, even when the

replacement made of the commissioner as the contracting body by the receiver of the commission does not exempt the latter from being subject to the conditions imposed by the contract regulations in force, in terms of respect for the principles of public access, competition and equality. Commissions most likely to be used for these purposes are: management of public services, services and, precisely, those related to one of the items which reveal the provisions most requested by the issuers of commissions, viz. assistance and technical support.

## Proposal

The management commission is a legal concept which facilitates the activity of public sector bodies and entities and it empowers them, in any of its forms, to act independently of the principles of free competition which govern the principles of public contracting. This exceptional nature requires the use of commissions to be duly justified. The recourse to management commissions involves an added value, which is assessable quantitatively or qualitatively, which supports this option over ordinary contracting procedures.

Therefore, **it is proposed to create** guidelines for public administrators to make proper use of this instrument by defining the characteristics and requirements which each type of management commission must meet, the list of the documents which must be provided when they are processed and the verification that all legal requirements have been met for this legal instrument to be used correctly.

## 11. NOTIFICATIONS

### Present situation

There is coexistence of postal or online notifications.

Notifications are generally regulated in the Public Administrations and the Common Administrative Procedure Act 30/1992. In Section III, which concerns the effectiveness of administrative actions, Articles 58-61 cover notifications and their publication, stating that they may be issued by any means which allows proof of their receipt, content and date.

Act 24/2001, of December 27, introduced the possibility of notifications being made online.

Act 11/2007, of 22 June, on Citizens' Electronic Access to Public Services, established the framework for online relations between the Administration and citizens.

In principle, electronic communication between the Administration and citizens is established at the choice of the latter, except in legal cases where the medium of communication is specified. However, Article 27.6 provides that Public Administrations may establish the obligatory nature of communicating by electronic means, when the interested parties are legal persons or groups of natural persons who, because of their economic or technical capacity or other accredited reasons, are guaranteed the access to and availability of particular technological resources.

Royal Decree 1671/2009, of 6 November, implements the previous Act with regard to communications and notifications and regulates dedicated e-mail addresses, under the responsibility of the Ministry of the Presidency. Order PRE/878/2010 establishes the status of the dedicated e-mail address system.

This Decree enables, by ministerial order, the obligatory nature of the system of obligatory electronic notification to be established for those citizens who meet the conditions of the aforementioned Article 27.6 of Act 11/2007, which are related to the corresponding Administration.

With regard to the AEAT, Royal Decree 1363/2010, of 29 October, regulates the cases of obligatory electronic notifications and communications.

Royal Decree 1671/2009 also regulates the possibility of the electronic publishing of Official Gazettes together with the publishing of acts and communications on the website instead of on message or bulletin boards, to the same effect.

With regard to the AEAT, the amendment of Article 112 of the General Taxation Act enabled electronic notification on the website.

Within this regulatory framework, a shift is taking place, with Public Administration notifications and communications which are exclusively on paper or carried out by face-to-face methods being replaced by electronic ones. This is advantageous to both parties, is more efficient and has lower administrative costs.

Indeed, in addition to the benefits which their use may involve, such as improving the success rate of notification, reduced processing times, the modernisation of our businesses, environmental improvement, the increase in debt recovery, etc., the direct savings for the General State Administration as a whole may be estimated at several tens of millions of euros.

In the **procedure of notifications and communications**, various phases may be identified:

1. The administrative procedure which gives rise to the requirements, agreements or resolutions needing to be notified as well as simple communications.
2. The computerised format of administrative procedures, which provide the information to be communicated or notified.
3. The production process for the document carrying the communication/notification and, when appropriate, printing it and placing it into an envelope.
4. The process which makes it available to the recipient.
5. The process involving the returning of the result of the communication/notification, and the way it is dealt with.
6. The notice for the recipient to appear in the case of unsuccessful communications/notifications.

Traditionally, these processes have been largely manual, in the form of a document sent by registered post and notice to appear communicated by means of Official Gazettes.

The e-Government Act **has brought about a revolution**. It is now possible to obtain documentation through computer means, make electronic notifications and receive notices to appear by accessing the organisation's website.

The working group has received information about notifications from various centres about how they are organised, their volume and economic impact. These centres are the **National Tax Administration Agency, the Directorate-General for Cadastre, the Central Economic-Administrative Court and the Directorate-General for Personnel Costs and Public Pensions**, all of which report to the Ministry of Finance and Public Administration; the Directorate-General for Traffic, pertaining to the Ministry of Interior, the Ministry of Defence and the Ministry of Employment and Social Security.

As the AEAT is the centre with the most information, there has been study of the process which follows the switch from postal notifications to electronic ones, above all the introduction of its obligatory nature, in order to determine the savings obtained. This will allow it to be extrapolated to other Administration bodies, so they may pursue the same process if they have yet to start.

In the AEAT this switch is also taking place in the area of taxpayer communications, which are not considered as notifications as proof of receipt is not required.

Savings result from the difference in costs between postal and electronic notifications and communications, by replacing notification on official message boards with the publication on the website of notices to appear and, in the case of postal notifications which must be maintained, from the centralisation process of the aforementioned phases 3, 4 and 5 of the notification process, in the Printing and Enveloping Centre of the AEAT, which is the postal operator's interlocutor.

Postal notifications and communications continue to be issued in many centres, essentially where they are not numerous, although significant progress in the use of online resources is anticipated.

The centres with the largest number of notifications and communications **have already taken decisions to improve the efficiency of these activities by progressing in e-Government**, which enables costs to be reduced and to improve the results of successful notifications.

Electronic notification currently uses different procedures, mainly through the websites of the different bodies (each has its own system where the citizen is required to access each website) and through the dedicated e-mail address (DEH) provided for in the regulations. This is a MINHAP service which is administered by the Post Office through a renewable agreement (a common service for all the Administrations in which the citizen can collect all his/her notifications from any organisation).

The common solution represented by the DEH also boasts other advantages: integration with the personal delivery service, possible single point communication of mobile phone or e-mail data for assistance and advisory services, the enabling of integration with the electronic mailbox address and the allowing of receipt in the same mailbox of notifications from the private sector (financial and insurance institutions, major suppliers of basic services, etc.). This makes the DEH a citizen's true electronic mailbox.

This is the system which AEAT has chosen although it combines it with the possibility of taxpayers or their representatives learning of the notifications they have pending when accessing their personal area on the AEAT website. That is, **the Agency places electronic notifications simultaneously both in the dedicated e-mail address and in the personal taxpayers' area on its website. Initial access to either of the two makes the notification effective.**

However, it is possible to implement an electronic management system which dispenses with the existing external distributor and design it through the direct relationship between the notifying body and the recipient.

Other bodies with mass notifications, such as the TGSS and the General Directorate for Traffic, have also implemented obligatory electronic notification for certain groups of companies but using specific systems for notice to appear. In particular, **the TGSS uses an online management system in the RED system, which enables company representatives to learn of the notifications they have pending when they access the TGSS website to conduct their dealings.** Taking into account that the purpose of accessing the DEH is to enable citizens to learn of all their notifications in a single e-mail address, the TGSS could, like the AEAT, simultaneously place notifications on its website and on the DEH.

In the **Secure Online Notification Service (NOTESS)**, notification by today's ordinary mail now involves a delay in the processing of debt, resulting from the period of the notification of the action, estimated at an average of 17 days. In the event that the notification has not been practicable and is returned by mail, this is increased by 20 days, due to the need for publication on the Bulletin Board. By contrast, online notification would require a maximum period of 11 days, taking into account that the need for publication of unread electronic notifications on the Bulletin Board has been removed too. Overall, the average notification period would be reduced by 26 days.

The problem would be the financial cost of satisfying the Post Office, but here it should be realised that as this involves administrative notifications which are reserved for the operator providing the universal postal service, its price may be **negotiated through a collaboration agreement. The increase in the number of notifications in the dedicated e-mail address may allow their current unit cost to be reduced.** Many more organisations are in the process of switching from voluntary electronic notifications to compulsory ones, which means that this is a very positive time as it represents a clear breakthrough for Spain. However, there is also a risk of constructing multiple different systems, which is not only inefficient for the Administration but is also, above all, negative for companies.

Moreover, postal notification will still be necessary, primarily for recipients who are natural persons. Although the production and distribution of postal notifications and communications through a Printing and Enveloping Centre has indisputable advantages, it is necessary to do so for a minimum volume of transactions, as there is a need for an initial investment which must be amortised within a short period, of between 3 and 5 years.



As a new feature to be highlighted, **the Directorate-General for Cadastre has implemented an electronic system of voluntary notification for cadastral revision by municipalities**, which will mean a considerable saving if successfully advertised and used by a significant percentage of those affected. This system involves councils making available to citizens (who have previously received at their homes a hard copy communication containing an electronic access key) the possibility of downloading the notifications once the interested party is accredited by a council official. In this way, citizens have the chance to receive administrative documents electronically, with the maximum distance to these points of information from more remote locations being 22 km. Therefore, this could be extended to any type of communication or notification of the General State Administration.

Although information on the economic costs of **postal notifications** has not been received from many centres, it has been observed that there is only a minor variation between those received. Therefore, it may be accepted that the average cost of a postal notification is 2.35-2.40 euros. It is necessary to add at least 0.18 euros for the production cost, so that the total cost is in the region of 2.55 euros. The cost of electronic notification is around 0.16 euros, which represents **an average saving of 2.40 euros per unit**.

With regard to **communications**, the cost is 0.25 euros plus 0.18 euros for production for a total cost of approximately 0.43 euros. With the cost of electronic communication being 0.11 euros, there is **a saving of 0.32 euros per unit**.

## Proposals

1. **Gradually extend obligatory electronic notification** in all General State Administration centres to those groups provided for in Article 27.6 of Act 11/2007 on e-Government. All General State Administration centres must use a single dedicated e-mail address for this as it is straightforward for recipients, who would otherwise be forced to consult several dedicated e-mail addresses continuously. It must be remembered that website notifications are free, compared to the suggested formula which does have a cost and which given the huge number of notifications and communications can reach over one hundred million euros. However, the possibility of receiving notifications both at the website and in the dedicated e-mail address will be retained temporarily.
2. **The centralised management at ministerial level of postal communications and notifications of all management centres and bodies for their production and distribution**, either using their own printing and enveloping centres, or by externally contracting these activities in a centralised manner. An exhaustive study of needs and detailed planning is considered necessary beforehand in order to optimise its dimensions.
3. For the fields in which postal notifications need to be maintained, **it is proposed to extend the use of the website of the centres for notices to appear** in place of publication in official gazettes and bulletin boards. Accordingly, it includes the creation of a single electronic bulletin board for the entire Administration, as a proposal by the Sub-Commission for Administrative Simplification.

Moreover, for those cases in which a group of recipients are interested in learning the outcome of a procedure, as with cadastral revisions, **the publication of information for individualised access on the website may be promoted** so that anyone who accesses their information is notified.

It is proposed to centralise the notifications of all the Public Administrations in **a single point** and reinforce their use among the public as well as to make the regulatory modifications to achieve this aim.



## 12. VEHICLE FLEET

### Present situation

Information has been requested on vehicles for managers and other vehicles (buses, lorries, special vehicles, vans, equipment, motorcycles, SUVs and passenger cars). This information includes the make, model, special vehicles, mileage, date of procurement or signing of contract, form of procurement, hiring, leasing, renting, annual sum (euros), duration, driver and remarks. This information covers a total of 10,506 vehicles which are not managed by the National Vehicle Fleet.

The regulations for use of the National Vehicle Fleet and the State-Owned Industrial Holding Company (SEPI) have been studied.

There has been a survey of 116 entities of the state Public Sector (Ministries, Heritage Group, etc.).

The National Vehicle Fleet and Vehicle Fleets of Government Representations in the Autonomous Regions have been excluded as their specific measures are contained in Order HAP/149/2013, of 29 January, which regulates motoring services provided by the National Vehicle Fleet and Vehicle Fleet Units integrated in Government Representations, Deputy Representations and Island Authorities.

Armed Forces' and State Security Forces' vehicles are not included in this study.

**A large dispersal of vehicle managers** has been noted. This could hinder the adoption of streamlining measures.

### Proposals

#### 1<sup>ST</sup> CENTRALISATION OF MANAGEMENT AND/OR MONITORING AT MINISTRY OR BUSINESS GROUP LEVEL

The Ministry or the head company of the group will be responsible for determining the degree of centralisation of the measures and, in all cases, how they are monitored.

#### *THE MEASURES TO BE ADOPTED ARE:*

- **Identification of vehicles which are dispensable due to lack of use or obsolescence**

Analysis of the need for vehicles:

- Studying who uses them.
- Why they use them.
- For how long they have been used and how many kilometres they are used per year.

Analysis of possible alternative measures to the permanent availability of the vehicle, Identification of dispensable vehicles and writing them off.

When appropriate, reorganising of the duties of the staff assigned to the vehicles.

- **Centralising of management control in the Sub-Secretariat or in the head company of the Group.**

Implementation of a vehicle management application to manage their procurement, alienation or write off, use, inventory, expenses, repairs, preventive maintenance, servicing, and other issues which may affect them.

- **Immediate management measures: Centralised in the Sub-Secretariat or head company of the group:**
  - Taking out of collective insurance for the vehicles of the Ministry or the group of companies.
  - Standardisation of instructions for use: SEPI model.

## 2<sup>ND</sup> REFORM OF THE NATIONAL VEHICLE FLEET AND VEHICLE FLEETS OF GOVERNMENT REPRESENTATIONS IN THE AUTONOMOUS REGIONS

Royal Decree 1527/2012, which reforms the National Vehicle Fleet, analysed by the Commission for Public Administration Reform (CORA), contains substantial modifications concerning the limiting of the numbers of senior staff with an official vehicle assigned to them. This proposal entails a reduction in the number of drivers, which would fall from 1002 in 2012 to 852 in 2014, and the number of vehicles assigned, which would fall from 921 in 2012 to 652 in 2014. This measure has produced considerable savings in the first year of implementation and there will be further savings over forthcoming years. The success of the most recent auction of used vehicles is noteworthy.

Similar measures have begun to be introduced in the Fleets of Government Representations in the Autonomous Regions.

## 13. PUBLISHING AND PRINTING

### Present situation

As a starting point, technical information about reprographic and printing services was requested from all ministries. A working group in the Ministry of Defence was set up to analyse the information about capacities from a technical perspective.

Information was requested from the General State Comptroller (IGAE) on the spending of ministries and bodies in order to estimate the expenditure in Item 240. Furthermore, the Annual Plan for Publications of the General State Administration was studied in order to assess needs.

The sphere of action of the study and the proposals embrace the General State Administration as a whole.

The advancement of the information society has increased the use of electronic publications in place of the printed version. This has led to a decrease in the needs for printing and reprographic services but has not led to them being streamlined.

### Technical values

The lack of comprehensive and unified management of available resources in the General State Administration and the maintaining of outmoded publishing and printing centres is leading to these services being subcontracted with the resulting cost this entails.

In view of the analysis of the existing printing services in the General State Administration it may be concluded that there are a large number of printing or reprographic services which may be considered as small or which possess obsolete equipment.

A total of 69 printing presses and reprography services have been inventoried. The following characteristics were taken into account:

- Type: Large, medium and small.
- Lay-out.
- E-book.
- Offset printing.
- Digital printing.
- Binding.
- Digital finishing (binding).

## Economic values

According to data provided by the IGAE on the expenditure of the different departments and bodies in Item 240 "Publishing and Distribution Expenditure" for 2012, only 4.69% correspond to payments to the Agency for the Official State Gazette (AEBOE).

However, it should be noted that probably not all the bodies calculated publishing and printing expenditure in the same manner.

## Personnel

With regard to the total personnel assigned to printing and reprographic services, following analysis of the data from the 69 presses, there are 618 people, of which 351 or 56.8% are in one of the large or medium-sized presses.

From the data on the printing presses and reprographic services inventoried, it follows that in general the General State Administration possesses a network of outmoded presses which are run in an atomised manner, while considering their ultimate aim to always be the undertaking of the editorial programmes of the different Departments and considering these programmes in relation to the economic data presented in the General State Budget for 2013.

Given the data, it may be concluded that only 5 presses are able to deliver the editorial programme of the SGA. These are:

- The press of the Agency for the Official State Gazette, which provides every service.
- The press of the Administrative Head Office of the Ministry of Finance and Public Administration, which provides every service.
- The press of the Geographic Centre of the Army of the Ministry of Defence, which provides every service.
- The press of the Sub-Directorate-General for Publications and Cultural Heritage of the Ministry of Defence, which provides every service except digital printing.
- The press of the National Geographic Institute, which reports to the Ministry of Infrastructure.

As there is no unified management of the General State Administration's printing resources, the various bodies which lack their own resources or those with insufficient or outmoded ones are forced to turn to outsourcing for their publishing and printing needs.

Regarding the allocation of spending in Item 240, it is necessary to establish uniform criteria for the General State Administration overall which reveal the exact total expenditure on publications.

In view of the information analysed, some of the areas being addressed in order to achieve cost savings and streamlining of resources are the following:

- Appointment of the Coordination Board for Official Publications as the administrator responsible for the publishing of the General State Administration's editorial programme.
- Moving towards implementation of the AEBOE printing press as a single resource for the publishing of the General State Administration's editorial programme and enhancing it so that it may offer integrated services which are competitive in quality, price and execution times.
- The tender by the AEBOE of publishing and printing services for all the publishing which, although not in the editorial programme, cannot be undertaken by the resources of the editorial body itself due to its volume.
- Enhancing of electronic publishing so that it fully replaces its paper equivalent together with introducing printing on demand.
- Establishing of the obligation to use the publishing and printing services of the AEBOE as a step prior to the authorisation for outsourcing.
- Streamlining of reprography services with a single management centre per Ministry.
- Dismantling of all those presses with obsolete machinery.
- Introduction of streamlining measures in the public contracting of equipment, machinery, material and services for the upkeep of presses.

## Proposals

As explained above, it may be concluded from the analysis of data on General State Administration resources that in general the resources available, primarily for offset printing, are obsolete or solely serve as a support for digital printing by the bodies themselves.

Thus, a series of actions are proposed overall which aim to unify **a significant percentage of the publishing and printing services in the AEBOE**, especially those tasks which exceed a specific cost, set each year in the General Plan for Publications of the General State Administration, and **always guaranteeing the application of competitive pricing relative to the market**.

To achieve this aim, the following phases have been established:

1<sup>st</sup> phase. A report must be created within each Ministry. This will include at least the following basic points:

- Identification of annual reprography and printing needs.
  - Inventory of printing presses and reprographic services with the identification of the machines available and determination of their production capacity, which must include, where applicable, information on the external production requirements to meet their needs.
  - List of personnel working in reprography services and printing presses, specifying their training.
  - Assessment of printing costs.
  - Assessment of machinery maintenance costs with a 5-year horizon.
  - Proposed streamlining of reprography and printing services which must include the removal of all that is surplus to requirements, taking into account that both the editorial programme and those tasks which cannot be done with their own resources will be published and printed by the AEBOE.
  - Appointment of Sub-Directorates for Publications or their equivalents as solely responsible for reprography and printing services.
  - Proposal for the unification of contracting, both in the procurement and maintenance of machinery and the procurement of supplies.
- For its part, the AEBOE will produce a report which aims to analyse the lines of action which are conducive to providing the resources enabling the publishing and printing of both the editorial

programme of the General State Administration and all those tasks which cannot be undertaken by Ministries or bodies themselves.

It is noted that in order to provide the AEBOE with the appropriate resources it may be necessary to redistribute personnel working in obsolete presses, with consideration given to the option of relocation to new destinations in order to meet the demand even by establishing various shifts. This measure would take better advantage of existing material resources by improving production costs and deadlines for implementation.

## 2<sup>nd</sup> phase.

- Designate the AEBOE as the sole printing press responsible for publishing and printing both the Editorial Programme of the General State Administration and those tasks which the different Ministries or bodies cannot perform with their own resources.
- For the transitional period until December 2015 and while the AEBOE is given the resources to publish the above Editorial Programme of the General State Administration with the quality, deadlines and prices which are appropriate and satisfactory for the other Departments, the presses listed below can lend support to the AEBOE press in the tasks mentioned.
  - The press of the Administrative Head Office of the Ministry of Finance and Public Administration.
  - The press of the Sub-Directorate-General for Publications and Cultural Heritage of the Ministry of Defence.
  - The press of the National Geographic Institute of the Army, which reports to the Ministry of Infrastructure.
- For this transitional period and in order to establish the sharing of tasks, the Coordination Board for Official Publications will be designated as the body responsible for establishing, on the Plan for Publications of the General State Administration being approved, the press responsible for each task.
- Both for the transitional period and subsequently, the Coordination Board for Official Publications must **expressly authorise the outsourcing of any publishing and printing task** when the administration itself finds this impossible for technical or capacity reasons.

## 14. UNIFIED MANAGEMENT AND OPERATION BY THE AIR FORCE AND NAVY OF AIR ASSETS, SCIENTIFIC VESSELS AND STATE MARITIME SURVEILLANCE CRAFT

### Present situation

There has been shown to be a proliferation and duplication of air and sea assets between the numerous bodies and institutions of State Administrations, both with regard to their use and their maintenance. This is leading to much higher operating costs due to the dispersal, outsourcing and atomisation of the resources needed for maintenance, while both the Air Force and the Navy possess the human resources and facilities to perform the above tasks as has sometimes occurred through collaboration agreements with different bodies.

### Air and sea assets

The State possesses fleets of an estimated 300 to 400 aircraft capable of being used in civilian missions and spread between the following ministries:

- Ministry of Defence.
- Ministry of Interior.

- Ministry of Infrastructure.
- Ministry of Agriculture, Food and the Environment (MAGRAMA).

Similarly, the State possesses various scientific vessels and maritime surveillance craft distributed between the following Ministries:

- Ministry of Interior.
- Ministry of Economy and Competitiveness.
- Ministry of Finance.
- Ministry of Agriculture, Food and Environment.

With regard to the aforementioned assets, it is important to note the collaboration agreement currently in place between the Ministry of Defence and the MAGRAMA by which the Air Force is responsible for the full running of the aircraft fleet in exchange for an annual financial compensation of around 50% of total costs.

The MAGRAMA covers maintenance expenditure (purchase of spare parts, tasks in logistics centres and extraordinary expenditure), fuel and the variable part of salaries (allowances and transport costs). For its part, the Air Force helps with the expenditure on pilots and technical staff (engineers and mechanics) and provides the infrastructure for operations: air bases, repair shops, command and control, refuelling vehicles, etc.

This collaboration system is satisfactory to both parties, as an operational unit with a high degree of training is maintained by the Air Force, and on the part of the MAGRAMA because it performs its role very satisfactorily in fighting fires with aerial resources and at a clearly lower cost than if it had to contract the service.

This model has proved excellent in terms of the missions undertaken and costs incurred, as the MAGRAMA only has had to take responsibility for 50% of costs, with a saving for the State of some 15 million euros in 2011.

Moreover, the Ministry of Defence has collaboration agreements with the Secretariat-General of Fisheries of the Ministry of Agriculture, Food and the Environment, and the Ministry of Economy and Competitiveness for the operation, maintenance and use of research vessels.

Air and sea assets, as multi-purpose elements of great value and technological level, also have needs which are associated with the extremely high cost of their development, procurement and operation. Added to this is the complexity of their maintenance, the high costs of training and preparation of their crews, and all the investment required in the areas of organisation and infrastructure. It is precisely these areas of procurement, training, operation and maintenance which are identified as potential areas for concentrating resources and efforts among the different state bodies.

Both the Air Force and the Navy possess skills, experience, know-how and excellence on the management and coordination of air and sea assets. In turn, they have at their disposal the most comprehensive and appropriate set of air and sea assets to continue ensuring State aerial activity and maritime surveillance with improved cost-effectiveness criteria.

Thus, the most efficient conclusion which could be promoted at national level would be one in which the **air assets and maritime surveillance of the State are mainly operated by the Air Force and Navy**, who would carry out each mission under the operational control of the state body directing the operation. All this would also benefit both the Air Force and the Navy, as it would enable a high level of training of the crews to be maintained through the implementation of various missions in support of other bodies.

In any event, for the appropriate formulation of a proposal there must be differentiation between those cases in which the operating and maintaining of air and sea assets is completely externalised from those others in which the relevant Departments have their own personnel resources already trained for this task



(as occurs in the State Security Forces and the Customs Surveillance Service). Hence, the collaboration formulas established must take into account the costs incurred in training their own crews and the possibility of obtaining European Union funding for the development of specific programmes for border surveillance.

Furthermore, and in order to optimise the synergies and savings from the proposed model, there should be progress towards **standardisation and homogenisation of the air and sea assets to be acquired in the future to replace those currently in operation**. With regard to those assets which need to be acquired and are capable of providing multiple capabilities for the benefit of multiple state bodies simultaneously (as with remote unmanned aircraft, which enable collaboration in areas such as the fight against terrorism, illegal immigration, organised crime, border control, search and rescue, cartography generation and intervention in emergencies) there must also be close coordination.

## Proposal

It is proposed **to move towards the unified operation and implementation of collaborative formulas in the management of the air and sea assets** available to the General State Administration through the Air Force and Navy.

Initially, the existing agreement with the MAGRAMA, by which the Ministry supported helps with variable maintenance costs as well as fuel and variable personnel costs (expenses and transport costs), would be used as a provisional economic model. However, this model needs to be adapted according to the different tasks which have to be performed with air and sea assets.

In creating these agreements, the duration of the contracts which the various Departments may currently possess must be taken into account, as well as EU-funded projects. These will set out the specific terms of the collaboration and identify the areas where it is more efficient to concentrate resources and operations, based on the real attainment of savings and the proper operability of the service.

This would then move towards a unified operation based on the following structure:

## Unified operations

With regard to **air assets**, the concept of the unified operation is based on having **a single fleet available, or a mixed fleet of civilian and military aircraft, operated mostly by Air Force personnel, but under the command of the corresponding body**, which would imply a considerable saving in personnel costs.

With regard to **sea assets**, the unified operation would be similar as vessels **would be operated by Navy personnel and the operation led by the corresponding body**. In general, and once this is detailed in the relevant agreements, vessels crewed by the Navy would operate within the framework of the procedures and command and control structure of the agency/institution affected in Spanish territorial waters, and of those of the Navy beyond them.

This management model would produce synergies in terms of engineering, maintenance, procurement of materials, spare parts and fuels, as well as a clear benefit for the Ministry of Defence in terms of personnel training.

However, this proposal may be subject to adaptation in the case of there already being personnel from other Departments who are specifically trained to undertake the tasks assigned.

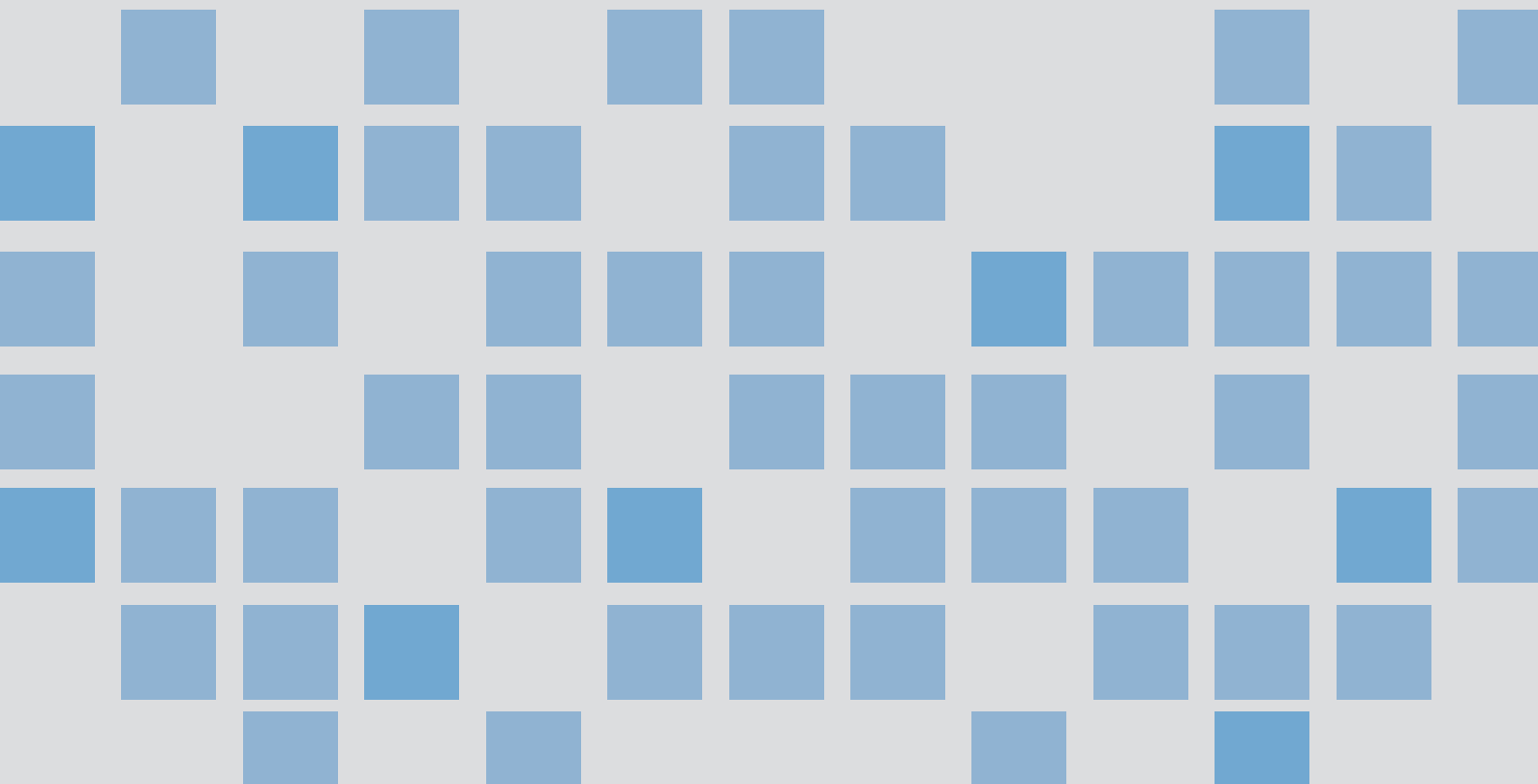
## Future model

While the initial model may follow the one proposed above, a future version could take two directions:

- The possible **assuming of functions undertaken with air and sea assets by the Air Force and Navy**.
- **The incorporation of the air and sea assets of Autonomous Regions**.

# WMI

## Sub-commission for institutional administration





## VII. SUB-COMMISSION FOR INSTITUTIONAL ADMINISTRATION

### 1. INTRODUCTION

The need to adapt organisational structures to new social needs and demands is inherent to the operation of the administrative system. In accordance with this principle, the Agreement of 26 October 2012, which created the Commission for Public Administration Reform (CORA), also constituted the Sub-Commission for Institutional Administration, calling on it “to analyse all areas of the Administration, reviewing the regulatory framework and the optimum models identified, and proposing appropriate modifications among currently-existing entities”.

To carry out this mandate, the Sub-Commission has sought to study and analyse all the constituent elements of the national public sector, both its composition and its effective activity, on the basis of the records and information supplied by the Inventory of Public Sector Bodies (INVESPE), which classifies the different entities, according to their specific characteristics.

INVESPE is updated periodically, as the data vary continually, but on 31 December 2012 it contained a total of 438 entities, compared to 452 on 31 December 2011 and 440 on 31 December 2003. The following text details the information available on these entities and their location within each of the three sectors identified in Article 3 of the General Budget Act (LGP).

ADMINISTRATIVE PUBLIC SECTOR	LEGAL TEXT	NUMBER
Autonomous bodies within the GSA	Art. 2. 1. b) LGP	64
Social Security management bodies and joint services	Art. 2. 1. d) LGP	5
Mutual funds for occupational accidents and diseases	Art. 2. 1. d) LGP	24
Other State entities of Public Law	Art. 2. 1. g) LGP	23
State Public Sector Consortiums	Art. 2. 1. h) LGP	20
State Agencies	Law 28/2006	8
<b>TOTAL</b>		<b>144</b>

PUBLIC ENTERPRISE SECTOR	LEGAL TEXT	NUMBER
Public companies	Art. 2. 1. c) LGP	13
State corporations	Art. 2. 1. e) LGP	171
Other State bodies constituted under public law	Art. 2. 1. g) LGP	36
State Public Sector Consortiums	Art. 2. 1. h) LGP	1
Funds lacking legal charter	Art. 2.2 LGP	22
<b>TOTAL</b>		<b>243</b>

PUBLIC SECTOR FOUNDATIONS	LEGAL TEXT	NUMBER
Foundations	Art. 2. 1. f) LGP	48
<b>TOTAL</b>		<b>48</b>

PUBLIC SECTOR TOTAL	NUMBER
TOTAL	438

The 2012 data on ministerial departments show that these entities are mainly present in three ministries: Finance and Public Administration, Public Works and Transport, and Economy and Competitiveness, i.e., in the areas that are most closely related to economic activity. This concentration becomes particularly apparent on taking into account the importance of public sector companies, which account for 39% of all public sector entities.

## 2. WORK METHOD

The Sub-Commission for Institutional Administration carried out its work in accordance with a plan in which a key role was attributed to the contributions of the different ministries, and incorporating the suggestions and proposals made by the various departments involved. This Working Plan was developed in the following phases.

### Phase 1. Compiling information on public sector entities.

On the basis of the INVESPE data held by the General Intervention Board of the State Administration (IGAE), the Sub-Commission drafted and sent to the different ministries two types of form relating to the 438 registered entities: the first, to record the data not included in the Inventory (expense budget, amount and source of revenue and number of employees); and the second, in which each ministry was requested to make a critical assessment of the activity of each entity, with respect to aspects such as the legal system applicable, its affiliations and safeguards, economic and financial management, personnel management, procurement, asset management and restructuring plans, either projected or currently being applied.

### Phase 2: Study of the legal framework and typology of public sector entities.

In parallel, the Sub-Commission carried out a descriptive study of the legal framework governing each type of entity, of its actual functioning and of the dysfunctions observed in each case. The Sub-Commission verified its compliance with the corresponding regulatory framework and, in general, its normal activities, in order to determine the appropriateness of the functions performed by each type of entity with respect to the aims for which it was created.

This study was carried out with task-specific contributions by individual members of the Sub-Commission, according to their qualifications and experience. In addition, special meetings were held with staff from other centres that were not directly participating in the Commission, such as the DG for the Civil Service and the DG for State Assets. The material distribution of the work was determined by differentiating, from the outset, each of the three components of the national public sector: Administrative, Corporate and Foundations.

This process gave rise to a situation analysis and certain initial findings, which have been revised as more information became available and as subsequent phases came into operation.

### Phase 3: Establishment of criteria for assessing the activity of public sector entities.

After analysing the information submitted by the ministries, the Sub-Commission sought to complement the aspects that were still incomplete, incorporating budget information, annual reports and even data

published on official websites. To this purpose, a document was prepared for all the ministries, requiring information on the following items or criteria, with respect to each agency incorporated:

1. Its purpose and main activities.
2. The type of affiliation to the ministry and the possible overlap of its activity with that of other ministerial department management centres.
3. The expenditure budget for 2013, detailed by chapters; a comparison of this budget with that for 2006, to illustrate the development of the agency in recent years.
4. The agency's staff numbers in 2013 and in 2006.
5. The expertise of the staff, stipulating the number of employees with higher education and their employment regime within the civil service.
6. The revenue budget for 2013, detailed by chapters, differentiating those generated by fees and charges, property income, income from treasury balances and grants provided by the parent ministry or, if any, from European Community funds.
7. The expenditure budget dedicated to outsourced activities, with particular attention to spending on "Technical Studies and Projects" by external bodies and companies.
8. The social effects and the social impact of the activity of each agency, including those of other departments or authorities and social interests, on the agency's collegiate management bodies.
9. The existence of peripheral, territorial channels of attention, making the service more accessible to the public.
10. The implications of the agency's activity with respect to its obligations under EC law and, in particular, its relations with EC agencies.

#### **Phase 4: Bilateral meetings with ministerial departments.**

The initial assessment was presented at bilateral meetings held with the corresponding ministerial departments. Prior to this, each ministry was provided with the information described in the previous phase, as background/context data, to be examined and confirmed in the course of the meeting.

#### **Phase 5: Receipt of proposals from the ministries; review of the descriptive chapter and of the preliminary findings.**

Following the bilateral meetings, each ministry sent the Sub-Commission its proposals, in accordance with the instructions of the General Inspectorate of the Ministry of Finance and Public Administration.

Simultaneously, the Sub-Commission reviewed the preliminary documents obtained and drafted the three-fold content of its Final Report—the descriptive analysis, the conclusions and analysis of the situation, and the proposals for reform—to be presented to the plenary of the Commission for Public Administration Reform.

In this final document, the Sub-Commission analysed the corrective instruments currently available and considered legislative changes and other measures that could be taken in response to unsatisfactory situations.

The Sub-Commission has also taken into account the necessary relation between its goals and those of the National Reform Programme that was submitted to the EC in April 2012 and updated in April 2013. It has also considered the proposal made by the Government and agreed with the Autonomous Communities at the meeting of the Council of Fiscal and Financial Policy on 17 January 2012, according to which all of the Communities have begun the process of reforming their respective public sectors.



The regulatory proposals put forward in the various areas of activity would be reflected in the area of the future Public Administration Act that concerns institutional administration, regulating both the rules applicable to all levels of government and those specifically addressing State agencies.

### 3. GENERAL AREA OF INSTITUTIONAL ADMINISTRATION

#### A. PRESENT SITUATION

The permanent need to adapt and adjust the system of institutional administration is immediately apparent, on a simple analysis of the regulation of its constituent agencies. As described below, laws from diverse standpoints have been successively adopted, establishing the regulatory framework of the auxiliary bodies available to the State to implement its political agenda and to provide the services required by the population.

- **Act 6/1997 on the Organisation and Functioning of the General State Administration**

The fundamental legal regulation of the different types of agencies and public bodies dependent on the State is set out in Act 6/1997, of 14 April, on the Organisation and Functioning of the General State Administration (LOFAGE). This Act defines “public bodies” as “entities created according to public law that conduct activities pertaining to the General State Administration, as differentiated instrumental organisations dependent on the national administration”. In turn, three types of organisation are distinguished: Autonomous Agencies, State Agencies and Public Business Enterprises.

Each of these public bodies, moreover, has its own regulatory system, which usually consists of a reference to the law by which it was created and any subsequent regulatory development, under the corresponding statutes. In some cases, there have been lags, with the regulations not being updated for many years. This is particularly evident in the case of the Free Zone consortia, dating from 1929, and the Holy Places of Jerusalem Board, from 1940.

- **The special regulation of public bodies**

However, the apparently general framework specified above is modified by the tenth additional provision of the same Act, which excludes certain entities from its area of application. At present, there are 15 such entities, with their own regulatory framework, such that the LOFAGE is applied only in a supplementary role. These entities are the National Securities Market Commission, the Nuclear Safety Council, the Spanish Broadcasting Corporation RTVE, the universities that have not been devolved to regional administrations, the Data Protection Agency, the Canary Islands Special Zone Consortium, the National Energy Commission, the Telecommunications Market Commission, the National Competition Commission, the National Postal Sector Commission, the National Council for Audio-visual Media, the National Gaming Commission, the Airport Economic Regulation Commission, the Prado Museum and the Reina Sofia National Art Museum.

This exceptionality highlights the main obstacle to the regulatory clarification of these bodies, i.e., the displacement of common law toward a special legal format, normally associated with the perception of a particular sector of activity, whether corporate or social, which through sectoral legislation acquires a legal framework that is especially suitable to its needs.

Therefore, the factor that introduces greatest complexity into the institutional landscape of the State is the existence of agencies and entities that have been created and regulated by specific laws that establish unique rights and readily overcome the general provisions of the LOFAGE.

While in some cases this is justified by the independence and uniqueness that characterises organisations such as the Economic and Social Council and the Spanish Data Protection Agency, in other cases the use of special legislation is more debatable.

The complexity of this process is illustrated by the Ports Act, which regulates the functions of 24 Port Authorities, whose governing bodies contain members nominated by regional government authorities; and by Act 14/2011, on Science, Technology and Innovation, which regulates Public Research Bodies in minute detail.

A second obstacle to the clarity of regulation of public bodies arises from the partial survival of autonomous commercial entities. Following the adoption of the LOFAGE, Article 60 of Act 50/1998, of 30 December, on Tax, Administrative and Social Measures, established a framework for public bodies to be adapted to the new law, but allowed the interim persistence of “autonomous commercial entities”. With respect to the 25 entities in question, the Act stipulated that their budget systems should “comply with the provisions for autonomous entities, without prejudice to the special circumstances resulting from their commercial, industrial, financial and related operations, and taking into account the provisions of the following paragraphs”.

This exception was abolished by the amendment included in final disposition number 14 of the State Budget Act for 2013, according to which, as of 1 January 2014, “the commercial operations account will not be included. In this respect, the above-mentioned operations will be integrated into the corresponding income and expenditure statements of the General State Budget”.

- **Foundations Act**

After the LOFAGE came into effect, the functional decentralisation of the State quickly regained its tendency toward diversity. The first stage in this process was the approval of Act 50/2002, of 26 December, on Foundations. Chapter XI of this Act specified the regime applicable to the foundations that are mainly constituted of public sector entities, applying this concept to the field of public administration. To do so, it stipulated the requirements and limitations determined by the special nature of the foundation as a public-sector body. In particular, it stated that national public sector foundations must meet two requirements:

- a) they must be constituted with a majority contribution, directly or indirectly, from the General State Administration, its agencies or other state public sector entities;
- b) over 50% of their permanent assets must be constituted of goods or rights provided or ceded by the above entities.

- **General Budget Act**

From another perspective, prioritising the analysis of the activities of the different entities, the General Budget Act 47/2003, of 26 November, regulates the whole national public sector, with three constituent parts:

1. The **Administrative Public Sector**, which consists of:
  - a) The General State Administration.
  - b) Autonomous bodies within the General State Administration.
  - c) Social Security management bodies, joint services and mutual funds for occupational accidents and diseases, in their public function of collaborating in the management of the Social Security system and its jointly-owned centres and institutions.

- d) Bodies with their own provision of funds from the General State Budget and which, lacking legal personality, are not integrated into the General State Administration but continue to form part of the State sector. Their economic-financial systems are regulated by the General Budget Act, without prejudice to the special circumstances stipulated in the rules for their creation, organisation and operation. However, the applicable system of accounting and control, in any case, is subject to these rules, and in this respect the provisions of the General State Budget are not applicable.
- e) National public-sector bodies established under public law and consortia, when their actions are directly or indirectly subject to the decision-taking power of State agency, when their primary activity does not consist in producing goods and services in a market regime and when their revenues are not mainly from trade.

2. The **Public Enterprise Sector**, which consists of:

- a) Public companies, dependent on the General State Administration, or any other public organisation tied to or dependent on it.
- b) State corporations, as defined in the Public Administration Assets Act.
- c) State bodies constituted under public law other than those included in the public administrative sector and consortia not included in the same.

3. **Public Sector Foundations**, constituted of State public sector foundations, as defined in the Foundations Act.

- **Public Administration Assets Act (LPAP)**

Article 166 and following of Act 33/2003, of 3 November, on Public Administration assets, regulates the enterprise assets of the General State Administration, comprised of the following:

- 1. Organisations constituted under public law, at least 50% of whose income is derived from operations in the market.
- 2. State enterprise companies, i.e., those in which at least 50% of the shares are owned, directly or indirectly, by State public-sector entities.
- 3. Commercial companies that, while not State enterprise companies, are in the category described in Article 4 of Act 24/1988, of 28 July, on the Securities Market, with respect to the General State Administration or its public agencies.

The LPAP is of particular importance with respect to State enterprise companies, which are defined in Article 166.1.c) as those in which State Public Sector bodies directly or indirectly provide 50% or more of the share capital, the holdings being accumulated when several such bodies provide this share capital. Article 166.2 of the LPAP stipulates that State enterprise companies, when constituted as limited liability companies that are wholly-owned, directly or indirectly, by the General State Administration or its agencies, shall be subject to the LPAP regime and the private law system, except in areas in which the corresponding budgetary, accounting, financial control and procurement rules are applicable.

- **State Agencies Act**

Concerns about the adequacy of public agencies and preparedness to undertake their reform led to a new law, Act 28/2006, of 18 July, on State Agencies and the Improvement of Public Services, which created a new type of public administrative sector entity. The primary objective of this Act was to establish

mechanisms to ensure accountability in the leadership and management of new agencies created, linking the achievement of objectives to a new remuneration system that takes into account effectiveness and the proper use of budgetary resources. For the same reason, the Act allowed more discretionality in budget management, relaxing the conditions under which budget modifications can be made. In addition, the Act authorised the creation of 12 agencies, although to date only seven have actually been constituted, together with the Spanish Agency for Medicines and Health Care Products, which was authorised under another Act. Thus, the following five remain to be constituted: Immigration and Emigration; Land Transport Safety; Performing Arts and Music; Carlos III Institute for Biomedicine and Health Sciences Research; Evaluation, Finance and Planning of Scientific and Technical Research.

In its second provision, the Act set a time limit of two years for the Government to achieve the transformation of certain autonomous organisations, with special characteristics, into State agencies, and required the general application of this format to new entities constituted from that moment.

However, with these provisions, the Agencies Act, which was intended to present the basic model toward which the entire Institutional Administration should be oriented, was somewhat contradictory. The fifth additional provision of the Act authorised the Government to transform into agencies those public bodies whose purposes and activities fitted this pattern, thus implicitly recognising the existence of other entities that did not meet this requirement and thus would not require transformation. Yet the seventh additional provision attributed the status of agency “as a general procedure” to all newly-constituted bodies. This contradiction gave rise to serious doubts about the all-encompassing nature of the new system.

Therefore, this Act cannot be said to have achieved its goals, although it has been on the statute book for six years, because its subsequent development has been very limited, and because measures to control public spending have neutralised the Act’s goal of providing agencies with greater financial autonomy, to the extent that the Annual Budget Acts have barred this possibility.

- **Public Sector Contracts Act**

Even more recently, the Government adopted Royal Decree 3/2011, of 14 November, approving the consolidated text of the Public Sector Contracts Act. For the purposes of the present paper, the most interesting aspect of this Act is its concern to differentiate between the “public sector” and what is specifically termed “public administration”, as well as to identify general principles for procurement that must be respected by all entities in the public sector. Most especially, it introduced the concept of “contracting authorities”, which, in accordance with European Community guidelines, stipulates in detail what is meant by the public sector.

- **Special regulation of regulatory bodies**

With a more limited purpose, Act 2/2011, of 4 March, on the Sustainable Economy, created its own specific regulation for the six regulatory agencies then existent, with special attention to ensuring their independence from market agents. The Act states that the purpose of these agencies is “to ensure the proper functioning of the regulated economic sector to ensure the effective availability and provision of competitive, high quality services for the benefit of the market as a whole and of consumers and users”. To do so, these agencies monitor, award, review and revoke certifications; inspect and sanction operators, resolve conflicts between them and arbitrate in the sector; and perform other functions stipulated in the Act.

- **The public sector and the Budget Stability and Financial Sustainability Act**

The multiple definitions in the rules defining the scope of the public sector are again apparent in Act 2/2012, of 27 April, on Budget Stability and Financial Sustainability, which to preclude any doubts re-

garding its interpretation stipulates the entities to which it is applicable, differentiating the area termed “public administration” and even referring to the definition made by the EU of this sector. Thus, the following are considered to comprise the public sector:

1. The public administration sector, according to the definition and scope set out in the European System of National and Regional Accounts approved by Regulation (EC) 2223/96 of the Council, of 25 June 1996, which includes the following sub-sectors, also defined in accordance with the same System:
  - a) Central Administration, which includes the State and the agencies of central administration.
  - b) Autonomous Communities.
  - c) Local governments.
  - d) Social Security Administrations.
2. Other State enterprise companies, corporations and other public law entities that are dependent on public administrations, not included in the previous section. These are also classed as pertaining to the public sector and are subject to the provisions of the Act that specifically refer to them.

Each of these diverse rules professes generality and classifies in a different way the entities within the public sector or administration, and has different implications depending on the legislation in which each definition is specified. The complexity of the scene is aggravated by the existence of other concepts that are governed by EC law and directly applicable in the domestic legal system, such as the European Grouping of Territorial Cooperation (EGTC) and the European Economic Interest Grouping (EEIG), which have a much more detailed regulation than is the case of consortia in Spain, with which they are very comparable.

The current goal of budgetary stability and, therefore, the policy aim of reducing public expenditure, together with the continuing ambition to achieve greater simplification and efficiency, has led to a reduction in the number of public agencies, ordered since 2010 under three successive decisions by the Council of Ministers:

1. The Decision of 30 April 2010, which affected 29 bodies, all business corporations: in 14 cases, they were merged or consolidated, and in 15 cases, liquidated or dissolved.
2. The Decision of 3 June 2011, which affected 10 foundations: six lost their status and four were dissolved or abolished.
3. The Decision of 16 March 2012, approving the Public Sector Restructuring and Rationalisation Plan, with a total of 80 processes of abolition, disinvestment or streamlined liquidation, with the extinction of 24 companies in which the State holds over 50% of the shares, and disinvestment from a further eight companies.

With a similar purpose, on 10 October 2012, the Government submitted a Bill to Parliament to create the National Markets and Competition Commission (CNMC), which came into force with the approval of Act 3/2013, of 4 June. The CNMC is configured as a public body under the Tenth Additional Provision of the LOFAGE, and will perform the functions previously attributed to the National Energy Commission, the Telecommunications Market Commission, the National Competition Commission, the Railways Regulatory Committee, the National Postal Sector Commission, the Airport Economic Regulatory Commission and the State Council for Audiovisual Media.

Since 2011, further simplification has been achieved with the abolition of two autonomous bodies: the Regulation and Organisation Marketing Fund for Fisheries and Aquaculture Products (FROM) and the Machinery Pool, both affiliated to the Ministry of Agriculture, Food and the Environment.



## B. PROPOSALS

### a) New regulatory framework for public administrations

The time elapsed since the adoption of the LOFAGE and, especially, the subsequent approval of the General Budget Act, complementing and extending the former, have modified it significantly, to the effect that in certain cases the equivalence between administrative agencies, according to these two laws, is not complete. For this reason, there is a need to **reform the current framework regulating public sector entities, replacing the various classifications of public bodies by a single one providing a clear-cut delineation and an integrated view of the current types of public bodies.**

Since 2008, the creation of State agencies has been virtually paralysed, and this has led to a strange situation in which the process of implementing new agencies has been sidelined. This has given rise to understandable uncertainties and doubts about their future development, and in practice has provoked a situation of inequality, in which agencies enjoy organisational and funding advantages that are not available to other public bodies that, to a large extent, conduct comparable administrative activities. The lack of continuity and development of the management contract in the relevant legislation in itself highlights the need to seek new ways of assessing the activity of agencies and determining the relation between the targets set by ministries and the results achieved by management activities.

To establish a clear, precise typology of current public bodies, this regulatory proposal will take into account entities with similar characteristics but different names, in both local and regional administrations. **Accordingly, a basic common policy framework will be adopted to bring order to the present dispersion and heterogeneity.**

The future regulation of public bodies that at present, and at least within the sphere of influence of the State, is mostly conducted according to the LOFAGE, would review the current legislation and address, in particular, two issues that to date have been insufficiently regulated:

- **Criteria for identifying each type of entity.** The aim is to establish criteria identifying each type of entity and which must be met for the creation or continuing existence of a public organisation. These criteria would be different for each type of entity, as indicated in the relevant sections of this report, and would be assessed objectively, but with the flexibility that may be required in particular circumstances.
- **Economic and financial controls for the different types of entity.** The aim is to establish a control system for each type of entity, suited to the purposes and activities in question, and to systematise the present situation of ad-hoc dispersion.

### b) Monitoring and assessment of State public sector entities

At present, the Spanish governmental administration has diverse interministerial instruments aimed at enhancing coordination, which all exert some kind of monitoring or control of the activity of ministerial departments and specialist agencies. These functions are channelled mainly through the IGAE, with respect to cost control, and through the Spanish Agency for the Evaluation of Public Policies and Quality of Services (AEVAL), regarding the evaluation of public policies. In addition, departments within the Ministry of Finance and Public Administration put forward organisational proposals and analyse and monitor the budgetary targets set by each cost centre.

For this reason, and taking into account the diversity of outlooks on one and the same issue, **what is needed is an integrated scheme of assessment and supervision that is independent of public bodies, at arm's length from managers and their interests and equipped with the technical means to implement**



**rigorous objective criteria. This evaluation process would extend to public bodies in the administrative sector, and also to business sectors and foundations, including corporations.**

This new scheme or procedure would be designed by the IGAE and its inspection services and, prior to its definitive implementation, it would be submitted for consideration and approval by the Independent Fiscal Responsibility Authority (AIRF). This monitoring and evaluation mechanism would come into action on at least two occasions:

**1. When a new agency is created.** The proposal will be required to pass a prior evaluative study taking into account the following aspects, to be analysed in detail in the report that must be prepared and presented by the proposing department:

- The strict application of the principle set out in Article 11.3 of Act 30/1992, which requires a **rigorous analysis of whether the new entity represents a duplication of a pre-existing one** and, if so, whether appropriate regulatory changes are proposed to eliminate or modify the former entity in order to avoid such duplication. This examination should extend to all entities with powers in the same territorial context, even if they form part of a different government administration, so that the proposal for an entity to be constituted must justify it, explaining in detail why alternative uses of pre-existing entities should be rejected.
- The **identification of the tasks justifying external decentralisation.**
- The **rationale for public intervention** in the area of activity concerned.
- The **goals to be achieved**, the results to be obtained and, in general, the management plan to be developed, specifying the corresponding time frames and projects associated with each strategy and time period considered.
- The **organisational consequences** arising from creation of the new entity: the hierarchic status of its governing bodies and the human resources required. In particular, the maximum staffing levels forecast, the framework for action in human resource management and staff remuneration levels, stipulating the amount of the wage bill assigned to performance bonuses or equivalent concepts for the workforce.
- The effects associated with the degree of fulfilment of the objectives set with regard to the **requirement of management responsibility of executive bodies and management personnel.**
- The **economic and financial consequences** and an action plan to ensure the sustainability of the functions to be performed.
- The establishment of **efficiency criteria and indicators enabling a subsequent evaluation of costs and benefits**, including those derived from supervision, the effects on coordination, the impact on human resources, effectiveness and flexibility in the implementation of the tasks assigned, economic efficiency in the implementation of these tasks, simplification of the procedures used, proximity of the activities assigned to their final beneficiaries, etc.
- The **procedure for introducing any annual amendments or adjustments** considered necessary.

**2. During the monitoring and evaluation of existing structures and of current administrative activity.** This would be an ongoing assessment, to confirm or reject the continuity of an entity, to determine its real activity, the financial cost incurred and the impact and social benefits achieved. The current control of effectiveness carried out by the ministry needs to be complemented with a periodic, external inspection to reaffirm the existence of the conditions that justified the creation of the entity. **This verification could be performed at three or five-year intervals and its outcome could extend to recommending the entity's dissolution.**

## c) Regulation, coordination and integration of the Inventory of State Public Sector Bodies (INVESPE) and the inventories of local and regional bodies

In order to coordinate the INVESPE data with those inventoried by local and regional authorities, the corresponding regulations should be developed to the fullest possible extent. The purpose of this coordination, which could include the joint use of databases, is twofold: to allow different levels of government to be informed, completely and with full security, about how public services are organised in other administrations, and exactly what functions are performed, especially when such services overlap with their own areas of competence; and to compile and make available to the public comprehensive information on existing public bodies and their activities, informing of the cost, effectiveness and social benefits of the services rendered.

In particular, this integration of available information would provide authorities with effective mechanisms to ensure compliance with Article 11.3 of Act 30/92, of 26 November, on the Legal Regime of Public Administrations and Common Administrative Procedure (LRJ-PAC), referring to the requirements for the creation of new bodies.

To provide the necessary legal framework for this integrated information system, we propose that **INVESPE should be regulated** as an instrument to ensure management, information, transparency and control of the State Public Sector, **incorporating a system for extracting information from local and regional authorities' inventories**. This reform should be implemented within the due framework and with all respect for the competences of the territorial administrations in this area. In addition, this regulation should strengthen the legal effectiveness of the inventory system with respect to third parties.

### 4. PUBLIC ADMINISTRATION SECTOR

#### A. PRESENT SITUATION

- **Area of application**

In this area, the Sub-Commission has studied and analysed the 144 bodies listed in the INVESPE, the distinctive features of which are their regulation under administrative law and their provision of public services. Within this sector, the most widespread type are the autonomous bodies, of which there are 64, together with 23 organisms established under special legislation and eight national agencies. In addition, five Social Security management and common services entities and 24 mutual funds for occupational accidents and diseases are also included in this sector although they present certain special characteristics. Finally, 20 consortia in which the State has majority shareholder status are also classified as belonging to this sector.

- **Aims and functions of public entities**

Although the LOFAGE contains a fairly detailed description of the nature and characteristics of each type of public entity, it makes no reference to the objective circumstances and type of services to be provided for this to be conducted in accordance with a given organisational format. In other words, the provisions of the Act do not stipulate clear criteria about the type of entity that should provide a particular type of service.

In this respect, the EC document SEC (2008) 323, while acknowledging that no single model can represent what is meant by an agency, offered a possible classification, taking into consideration the key functions to be performed. Thus, the following types were distinguished:

1. Agencies that adopt individual decisions that are legally binding on third parties.
2. Agencies that provide direct technical or scientific assistance to the Commission.
3. Agencies responsible for administrative activities.
4. Agencies responsible for collecting, analysing and communicating (or posting on the internet) objective information.

In the domestic Spanish context, whilst not overlooking the evident risks involved in establishing a classification for this purpose, our review of regulatory standards enables us to differentiate between different types of entities according to the type of activity performed and the functions assigned.

1. **Management bodies.** These are mainly responsible for providing a public service in a subsector that, due to its size or specialisation, requires this form of management. Their activity and relationships with their clientele are regulated under the LRJ-PAC, with no exceptionality other than their sectoral specialisation. This group includes entities such as River Basin Authorities and the National Public Employment Service.
2. **Coordinating bodies.** The distinctive feature of these organisations is that they require the participation of other ministries or authorities in seeking administrative effectiveness and consistency. Examples include the Instituto Cervantes, the Spanish Agency for Food Safety and Nutrition (AESAN), the Spanish Agricultural Guarantee Fund (FEGA), which coordinates the involvement of regional payment agencies, and the National Transplant Organisation.
3. **Participatory entities.** These entities require a high degree of social participation for their activity to be effective. Their legal-administrative relations target specific social groups or those subject to some form of qualification. Representative examples are the Economic and Social Council (CES), the Wage Guarantee Fund (FOGASA), the Civil Service Mutual Insurance Society (MUFACE) and the Youth Council.
4. **Research and study entities.** The specificity of the organisation and its autonomy are justified by the independence required by its research or training activity. This group contains entities such as the Spanish National Research Council (CSIC), the Carlos III Health Institute and other public research bodies, together with others that act in this area but which do not fall into the latter category, such as the National Institute of Public Administration (INAP) and the Centre for Sociological Research (CIS).
5. **Instrumental bodies.** These are created and carry out their activities only at the service of the government administration, and have virtually no relation with citizens and their demands. Typical examples are the State Security Infrastructure and Equipment Management Body (GIESE) and the Defence Department Institute of Housing, Infrastructure and Equipment (INVIED); other bodies of this nature are the Cultural Infrastructure and Equipment Management Body and the State Vehicle Fleet.

Since current legislation does not provide clear criteria to justify the existence of a specialised entity, a detailed analysis of those currently existing can provide data and information of interest to justify maintaining such structures. From these data, diverse criteria may be proposed, which would be different for each of the three types of entities, to ensure the necessary flexibility. These criteria are set out in the Conclusions and Proposals section.

In general, the management of a public service by an entity with its own legal personality is considered to guarantee the technical expertise of its staff, its organisational autonomy, flexible management and, in short, greater effectiveness. This belief persists despite the personnel cuts that have affected most such entities in recent years. However, this form of organisation can also give rise to organisational abuse, the defence of corporate or sector interests and, ultimately, the disappearance of potential benefits in day-to-day

management. Moreover, in some cases, the service is so costly that its expected advantages are inverted to become obstacles to efficiency. Accordingly, spending levels must be reviewed, as in many such bodies the costs of internal administration and management are excessive.

Overlaps between the actions of national and regional agencies, although there is some repetition in their denomination, are not as prevalent as has been thought. Regional bodies are more likely than state agencies to have an executive or managerial component; they generally need to incorporate planning and coordinating activities, but sometimes the lack of material resources or technical expertise prevents the full development of the leadership role required. In these circumstances, the funding provided by national bodies can play a significant role, although this can also lead to conflicts of powers with the regions.

- **The creation of government agencies; ministerial supervision and political control**

The basic characteristic of entities with legal personality is their organisational and management autonomy, and hence their independence with respect to the supervising ministerial department (or the one which its activities concern). However, this autonomy is the converse of their affiliation, referred to in Article 44.1 of the LOFAGE in the words “public bodies shall comply with the principle of instrumentality regarding the goals and objectives that are specifically assigned to them”.

Furthermore, it is especially important to prevent this form of management from resulting in a duplication of activities between the autonomous body and the management centres of the supervising department.

It is therefore essential to assess the degree of autonomy and how decision-taking supervision is exercised, in order to determine whether governmental oversight should be intensified or whether increased flexibility should be granted, in order to ensure the agency can fulfil its responsibilities and justify its separate existence. In our analysis, two cases were observed that highlight these two situations very significantly: that of entities that in some way are linked to more than one department or to other entities (this would be the case of the sectoral research institutes that are formally affiliated to the Ministry of Economy and Competitiveness); and that of entities whose activities are performed in conjunction with those of the ministerial organisation (as is the case of the Women’s Institute and the DG for Equal Opportunities).

In any case, ministerial supervision is effected through various instruments:

1. The Department’s prerogative to recommend to the Council of Ministers the appointment of the public agency’s Director or President. This is the traditional formula, although increasingly subject to exception as a result of the reduced rank of the senior official, who in many cases is now a Deputy Director General, and hence appointed directly by the Minister or other ministerial authority.
2. The power of supervisory Departments to appoint members to the agency’s Governing Board or collegiate governing body of the entity.
3. The possibility of the agency’s administrative acts being reviewed by higher authorities within the Ministry and, in particular, the power to resolve administrative appeals filed against the decisions of entities with legal personality.
4. Participation in certain agency activities that involve the exercise of administrative powers, in particular those of a fiscal, expropriatory, inspectorial or disciplinary nature.
5. In certain cases, the objectives and detailed activity of administrative bodies are specified in an overall plan approved by the Ministry; this is the case of management contracts for State agencies, which have certain similarities with the programme contracts entered into with business entities.
6. In some cases, ministerial supervision and control mechanisms are strengthened with other external controls, for example, by Parliament, when the special importance of the activity so requires, as is the case of the Nuclear Safety Council.

A case in point of the autonomy-supervision duality and the difficulty in achieving a satisfactory balance between the two is highlighted in Article 19 of Act 29/1998, of 13 July, regulating the Contentious-Administrative Courts, which states that “public law entities with legal personality that are linked to or dependent on any public authority” may “challenge acts or decisions affecting the area of their activities.” However, Article 20 prevents these entities from exercising this option with respect to the “activity of the Administration on which they are dependent”, although exemption from this prohibition is granted to “entities that by law are endowed with a specific statute of autonomy from said Administration”.

At this point, a striking exception should be noted: together with the bodies and organisations that are functionally and hierarchically affiliated to ministries, there are also independent bodies that have no hierarchical relationship with any Ministry, beyond their functional location or the simple role of intermediation in their relations with the Government. This is the case of the Economic and Social Council, the Spanish Agency for Data Protection, the Nuclear Safety Council and the regulatory bodies. The main effect of this independence is the greater autonomy in the preparation of their budgets, which are integrated into the State budget without the corresponding Ministry having any special powers in this process, and the full autonomy in their personnel selection procedures.

- **Revenue and expenditure budgets**

The expenditure budgets of 50 autonomous bodies are exceptional in that current expenditure accounts for most of their spending. Analysis of these entities provides significant information about their activities, revealing widely varying spending patterns in the different sectors. The public administrative sector budgets for 2011 highlight the following types of entities:

1. Organisms whose expenditure is mainly accounted for by personnel costs and the purchase of goods and services. These include the European Educational Programme Organisation (99%), the State Tax Administration Agency (AEAT) (96%), the Military Construction Service (96%), AEVAL (96%), the State Vehicle Fleet (95%), the Centre for Sociological Research (CIS) (95%), the Tobacco Market Commission (93%), the Audit and Accounting Institute (93%), the Spanish Confederation of Associations of Construction Products Manufacturers (CEPCO) (92%), the State Agency for Medicines and Health Care Products (92%), the National Transplant Organisation (92%), the Instituto Cervantes (92%), the National Intelligence Centre (92%), the National Competition Commission (92%), the Institute for Fiscal Studies (91%), the Armed Forces Horse Breeding Organisation (91%), the Prison Work and Occupational Training Organisation (90%), the National Institute for Health and Safety at Work (90%), the Agency for Olive Oil (91%), the Prado Museum (90%) and the Centre for Legal Studies (CEJ) (90%).
2. Organisms whose budgets are mainly used to finance current funding. These bodies are of great importance as a source of funding for external activities. Outstanding in this respect are the National Employment Institute (SEPE-INEM) (99%), the Wage Guarantee Fund (98%), the State Agricultural Insurance Institution (99%), the Institute of Cinematography and Audiovisual Arts (87%), the Spanish Agricultural Guarantee Fund (FEGA) (80%), the Spanish Agency for International Development Cooperation (AECID) (78%), the National Public Administration Institute (72%), the Institute for the Restructuring of Coal Mining (61%), the National Sports Council (53%) and the National Institute of Consumer Affairs (50%).
3. Organisms whose budgets are mainly used to finance capital expenditure. These bodies are of major importance as an instrumental element within the public administration. The most significant of these bodies are the Cultural Infrastructure and Equipment Management Body (86%), the State Security Infrastructure and Equipment Management Body (81%), ICEX Spain Export and Investment (79%), the River Basin authorities (49-75%), the National Centre for Geographic Information



(60%), Spanish Tourism (Turespaña) (59%), the Armed Forces Housing Institute (55%), the National Parks (46%), the Spanish Institute of Oceanography (46%) and the National Aerospace Institute (40%).

Another significant factor is the importance of the expenditure devoted by public bodies to “technical studies and projects” that are carried out by other bodies. In 2013, this item accounted for over 140 million euros of administrative sector spending. Inevitably, these costs should be considered in relation to the sufficiency or suitability of the in-house staff to meet the demands presented, and with the need to resort to the market to seek solutions or address shortcomings of this kind. This obliges us, in turn, to reconsider whether the public bodies are ‘fit for purpose’.

Another significant area of budget data is the entity’s capability to generate or obtain income, although in fact in only 11 cases does the revenue obtained from Chapter 3 of the budget, fees and prices account, for over 30% of the total revenues: the Tobacco Market Commission (100%), the Aviation Safety Agency (100%), the Road Traffic Authority (99.6%), the Nuclear Safety Council (98.4%), the Institute of Accounting and Auditing (98.0%), the Agency for Medicines and Health Care Products (89.3%), the Patent and Trademark Office (84.7%), the Official State Gazette (BOE) (80.9%), the Data Protection Agency (66.5%), the Prado Museum (34%), and the State Meteorology Agency (32.2%).

- **Economic and financial management**

In accordance with the provisions of Act 17/2012 of 27 December on the State Budget for 2013, the budgets of the agencies that constitute this sector are limited to the following types:

- a) The State budget.
- b) The budgets of autonomous General State Administration agencies.
- c) The Social Security budget: management bodies, joint services and Social Security mutual funds for occupational accidents and diseases.
- d) The budgets of State agencies.
- e) The budgets of public bodies whose specific legislation limits the funds available to their spending budgets.

Their accounting systems are regulated by the General Public Accounting Plan, approved by Order EHA/1037/2010, of 13 April, which refers to “the entities included in the public administrative sector”.

The IGAE, according to General Budget Act 47/2003, of 26 November, exercises the internal control of the financial and economic management of the State sector, with full autonomy from the authorities and other entities whose management it controls. The internal control is effected through one of the means described in the above Act: supervisory function, permanent financial control or public audit. In turn, public audit takes the following forms: the accounting regularity audit, the compliance audit and the operative audit.

This diversity of control systems means a detailed analysis is needed of each type of control body. This is done taking into account the 2013 Public Audit Plan and the 2011 Accountability Report.

1. **Administrative autonomous bodies.** According to Articles 149, 158 and 163 of Act 47/2003, these bodies are subject to audit, permanent financial control and public audit (included in the Annual Audit Plan). Thirty-six bodies are subject to these three types of controls, except the Youth Council, which is not subject to pre-audit, under the Council of Ministers Decision of 8 January 1999, on the regime of financial-economic control applicable by the IGAE to certain public bodies.



2. **Commercial autonomous bodies.** In accordance with the Council of Ministers Decision of 8 January 1999 on the regime of financial-economic control applicable by the IGAE to certain public bodies, autonomous agencies which prior to their adaptation to the LOFAGE had the status of commercial, industrial, financial or similar autonomous bodies will be subject exclusively to a permanent financial control system. Articles 158 and 163 of the General Budget Act stipulate that these bodies are subject to permanent financial control and public auditing (Annual Public Audit Plan). All commercial autonomous bodies (28 in total), thus, are subject to permanent financial control and auditing.
3. **State agencies.** Article 31 of Act 28/2006, of 18 July, on State agencies and the improvement of public services, states that "1. External control of the financial and economic management of State agencies shall be conducted by the Court of Auditors in accordance with the corresponding regulations. 2. Internal control of the financial and economic management of State agencies shall be conducted by the IGAE, in the form of permanent financial control and public audit, under the conditions and in the terms established in the General Budget Act". This permanent financial control is to be conducted by Delegate Controllers in State agencies, depending functionally on the IGAE. In application of this general rule, the eight existing agencies are subject to the above-mentioned controls.
4. **Social Security management entities and joint services and Social Security mutual funds for occupational accidents and diseases.** Both types of body may be subject to public audit if they are included in the Annual Public Audit Plan. Under Article 158 of the General Budget Act, the five Social Security management entities and joint services are subject to permanent financial control. The Social Security mutual funds for occupational accidents and diseases are subject to permanent financial control if they are classed as belonging to one of the cases provided for in Article 74.1 of the General Social Security Act under which the Ministry of Labour and Immigration may take the precautionary measures described in the following paragraph when the mutual fund is in any of the following situations.
  - a) When its reserves fall below the minimum level stipulated in the regulations.
  - b) De facto situations, observed by the Administration, of a financial and economic imbalance that threatens the solvency or liquidity of the entity or the interests of the mutual fund and its beneficiaries, or a breach of its obligations, or accounting or administration insufficiencies or irregularities that conceal the true situation of the entity.

The total 24 mutual funds are subject to audit and compliance controls, in accordance with the Annual Audit Plan.

5. **Other public sector agencies,** which under Article 158 of the General Budget Act are subject to permanent financial control. However, public audit action may be modified, as stated in the Annual Audit Plan under a Council of Ministers Decision, when so recommended by the Ministry of Finance and Public Administration, and at the initiative of the IGAE. Public sector agencies included in the Annual Audit Plan (Article 165 of the General Budget Act) are also subject to public audit.

The thirteenth additional provision of the General Budget Act states that "without prejudice to the provisions of Article 3 of this law, the entities referred to in paragraphs g) and h) of section 1 of Article 2, which existed prior to the entry into force of this Act, shall retain the economic and financial regime of accounting and control established by the corresponding regulatory laws prior to such entry into force. In addition, the economic and financial regime of accounting and control established by regulation or by a decision of the Council of Ministers is to be maintained until such regulation or decision is revoked or amended".

Of the 23 entities included in the public administrative sector, 21 are subject to audit, and in addition the State Tax Administration Agency (AEAT) is also subject to tax account audit. Except the following entities, which are only subject to the public audit according to their specific legislation, they are also subject to permanent financial control:

- Canary Islands Special Zone Consortium (Act 19/1994, Article 33.6).
- Instituto Cervantes (Article 11.5 of the Statute).
- The Open University (UNED) (Article 236 of its Statute).
- The Economic and Social Council (Article 10.5 of its Statute).
- The National Securities Market Commission (Regulations).
- The National Energy Commission: the economic and financial control of this Commission is conducted by the IGAE, in accordance with the provisions of Arts. 17 and 99.3 of the consolidated text of the General Budget Act, without prejudice to the functions that correspond to the Court of Auditors.
- The Telecommunications Market Commission: economic and financial control of this Commission is conducted in accordance with the provisions of the General Budget Act.

The remaining two entities are not subject to control:

- The National Council for Audiovisual Media: its functions are currently implemented by the Sub-Directorate General for Information Society Content, within the Secretariat of State for Telecommunications and for the Information Society, within the Ministry of Industry, Energy and Tourism.
- The Airport Economic Regulatory Commission: its functions are currently implemented by the Directorate General of Civil Aviation.

These two entities were merged into the new National Markets and Competition Commission (CNMC), created by Act 3/2013, of 4 June.

**6. Consortia.** The thirteenth additional provision of the General Budget Act states that “without prejudice to the provisions of Article 3 of this law, the entities referred to in paragraphs g) and h) of section 1 of Article 2, which existed prior to the entry into force of this Act, shall retain the economic and financial regime of accounting and control established by the corresponding regulatory laws prior to such entry into force. In addition, the economic and financial regime of accounting and control established by regulation or by a decision of the Council of Ministers is to be maintained until such regulation or decision is revoked or amended”.

When the above-mentioned regime is established by reference to the provisions of the consolidated text of the General Budget Act, approved by Legislative Royal Decree 1091/1988, of 23 September, the reference shall be to the applicable provisions of this Act in Chapter V of Title II, Chapters III and IV of Title V and Chapter IV of Title VI concerning the regulation of the budget, accounting and control regime.

The entities included within the Public Audit Annual Plan (Article 165 of the General Budget Act) are subject to public audit. Of the 21 existing State consortia, 20 belong to the public administrative sector and are subject to the Annual Audit Plan (account and/or compliance audit) except the following three, which are not subject to control:

- Consortium to support online biomedical research by clinical research and experimentation units (CAIBER) (Agreement of 25 November 2008): at the meeting of the CAIBER Governing Council, on 25 May 2012, it was agreed to dissolve the consortium and to establish the corresponding liquidation committee.

- Consortium for the programme for Spanish athletes preparing for the London Olympic Games of 2012: the cooperation agreement was signed on 24 April 2009 and a study is currently being made to determine whether its goals have been achieved.
- The Solar Decathlon Europe Consortium.

The Consortium for the construction of the Malaga Music Auditorium is affiliated to the public business sector and is subject to account audit.

- **Personnel management**

A basic parameter for assessing the activity of these bodies is the number of staff employed. Sixteen agencies have more than 1,000 employees, among which are the AEAT (28,099), the Road Traffic Authority (15,040), the National Employment Institute (SEPE-INEM) (10,730), the National Research Council (CSIC) (7,023), the National Statistics Institute (INE) (4,338), the nine River Basin Authorities (4,837 in total), the Governing Board of the National Heritage Authority (1,574), the Spanish Agency for International Development Cooperation (AECID) (1,510) and the Cervantes Institute (1,123).

At the opposite end of the spectrum, there are 15 agencies with fewer than 100 employees: the Royal Board of Trustees for the Disabled (19), the State Security Infrastructure and Equipment Management Body (38), the Institute for the Restructuring of Coal Mining (43), National Transplant Organisation (55), National Agricultural Insurance Authority (59), the Spanish Agency for the Evaluation of Public Policies and Quality of Services (AEVAL) (60), the European Educational Programmes (61) the Youth Council (65), the National Anti-Doping Agency (66), the Centre for Legal Studies (66), the Centre for Sociological Research (CIS) (78), the Tobacco Market Commission (88), the Spanish Confederation of Associations of Construction Products Manufacturers (CEPCO) (92), the El Pardo Experimental Hydrodynamic Channel (95), and the Spanish Centre of Metrology (96).

Also significant is the large number of temporary employees in some public bodies and the fact that the number of posts actually covered is sometimes significantly fewer than is reported in budget annexes.

- **Asset management**

Asset ownership is one of the most characteristic features of these bodies. In this regard, Article 42 of the LOFAGE establishes as a general, common principle that “public bodies have a distinct public legal personality; they possess assets and a treasury and enjoy autonomous management, subject to the terms of this Act”.

The broad field of State-owned assets can be divided into three classes: State assets, Social Security assets and the National Heritage. In turn, and according to Article 9 of the Public Administration Assets Act, “State assets consist of those of the General State Administration and those of the public bodies that depend on it or are hierarchically linked to it”. This means that the ownership of the assets that comprise the State assets may correspond to the General State Administration, in which case their management, administration and operation is conducted by the Ministry of Finance and Public Administration, or to diverse public bodies, in which case their management, administration and operation are conducted by these bodies.

Whichever regime they are subject to, State assets are governed by the provisions of the Public Administration Assets Act, although, as is the case in the regulation of public bodies by the LOFAGE, there are important exceptions to the common system, stipulated in various additional provisions. Thus, the General State Administration has four special regimes: Defence (Additional Provision 7), the Interior (Additional Provision 8), Accumulated Trade Union Assets (Additional Provision 2) and Assets confiscated in the course of actions to combat drug smuggling (Additional Provision 17). Other exceptions include the assets of the

Social Security system (Additional Provision 3), the National Heritage Authority (Additional Provision 4), the Instituto Cervantes (Additional Provision 5), the Armed Forces Housing Institute (Additional Provision 6) and the National Employment Service (Additional Provision 20).

With respect to the bodies excluded from direct application of Additional Provision No. 10 of the LOFAGE, Additional Provision No. 5 of the Public Administration Assets Act states that this law is applicable to them, and also to the assets of State-owned ports and those of the port authorities.

Two of the autonomous bodies referred to in the additional provisions of the above-mentioned Act are responsible for their own management. These are the Defence Department Institute of Housing, Infrastructure and Equipment (INVIED) and the State Security Infrastructure and Equipment Management Body (GIESE), which are governed by special rules, subject to the supplementary application of the Public Administration Assets Act.

For these two entities, the special management regime for the immovable assets assigned to these ministries, as determined in their regulatory provisions, will expire 15 years after the entry into force of the present law. The Act came into force in 2004, and so this period will conclude in 2019.

- **Special reference to the mutual funds for occupational accidents and diseases**

Both INVESPE and the Annual General Accounts approved by the Government and submitted to the Court of Auditors include data referring to 29 entities in the Social Security System. These are comprised of four management companies, the General Treasury of the Social Security and 24 mutual funds for occupational accidents and diseases. Of the four management companies, two – the National Social Security Institute (INSS) and the Marine Social Institute (ISM) – are attached to the Ministry of Employment and Social Security, and another two – the National Health Care Management Institute (INGESA) and the National Institute for Social Services (IMSERSO) – are attached to the Ministry of Health, Social Services and Equality.

According to Additional Provision No. 6 of the LOFAGE, this law is applicable to management bodies and the General Treasury of the Social Security, as regards autonomous agencies, except as stipulated in the following paragraph.

The only exception made in this regulation refers to “the personnel, economic-financial, assets, budget and accounting systems of the management entities and of the General Treasury of the Social Security, and that concerning challenges to and reviews of their actions and decisions, and legal assistance”, which shall be that established by the specific legislation in each case and by the General Budget Act as appropriate, and, as supplementary legislation, by the LOFAGE itself.

- **Special reference to consortia in which the State has a majority holding**

The characteristic feature of consortia, as entities belonging to the public administrative sector and providing services of this nature, is their inter-administrative character. Accordingly, the primary requirement for a consortium to be created is the participation of at least two public administrations.

Formally, consortia are produced as the result of a bilateral commitment formalised in a cooperation agreement to create a common organisation, which may take the form of a consortium with legal personality or of a corporation. This instrument has gained wide acceptance among local entities, to cooperate with other public administrations for reasons of common interest or with private non-profit entities whose goals are in the public interest, and therefore concurrent with those of public administration.

Secondly, for a consortium to be included in the State public sector, its State participation must exceed 50%, with respect to the voting rights in its governing bodies and in terms of the financial contributions made by the administrations taking part in the maintenance of its activity.

However, these two requirements are inadequately specified in the national administrative regulations. Thus, the LOFAGE stipulates nothing in this respect, reflecting the problems encountered, during its Parliamentary examination, in regulating the organisational rules of the General State Administration for public-sector bodies that are interlocked with others. For this reason, the legislators envisaged the existence of consortia and decreed only minimal stipulations, in this respect, in Title I of Act 30/1992, which refers specifically to inter-administrative relations.

The inter-administrative nature of consortia and the absence of legislation making explicit reference to them lends maximum significance to their statutes, which in practice constitute the regulatory standard for the organisation of each consortium, determining how it will function. However, this status of inter-administrative body condition is reconsidered in the text of the draft law on Local Administration Reform, which introduces the concept of consortia being affiliated to a particular administration, a notion that is unprecedented in Spanish public law.

Regulatory developments subsequent to the LOFAGE and the need to establish criteria for the financial supervision and control of these entities has led Parliament to consider consortia as merely another type of entity, which must be subject to the same budgetary discipline as all other public-sector entities. This is the rationale for their inclusion in Article 2.1.h) of the General Budget Law and in the Public Sector Procurement Act.

As for the type of functions that consortia may perform, obviously, there are no overriding, general provisions, because this aspect must be specified in the corresponding statutes, but it is unanimously held that the exercise of these functions requires each of the administrations comprising the consortium to possess the powers necessary to intervene in the area concerned. For this reason, consortia are frequently constituted in the field of culture, because the Spanish Constitution does not distinguish between the powers of the State and of the Autonomous Communities in this area. This type of entity has also become very common in the field of research, another area in which the different administrations have sufficient enabling competencies.

The INVESPE records a total of 21 consortia: 13 affiliated to the Ministry of Economy and Competitiveness, four to the Ministry of Foreign Affairs and Cooperation and one each to the Ministries of Finance and Public Administration, Public Works and Transport, Education, Culture and Sport, and the Presidency. It also includes 115 entities in which the State participates, but does not have a majority holding. Of these, 20 are located in the public administrative sector and one in the public business sector.

## B. PROPOSALS

### a) Amendments to the regulation of entities within the public administrative sector

Future regulations of public agencies, especially those currently addressed in the LOFAGE, should refer to the following objects and possible contents.

- **Identification criteria for each type of entity.** Establish criteria identifying each type of entity and the requirements to be met for the creation or continuing existence of a public body. These criteria would be different for each type of entity, although this sector should include the management, promotion or delivery of public services. This question should be approached with flexibility. For the sake of example, the following criteria for this sector might be considered:
  1. Number of employees above a certain threshold.
  2. A spending budget that is significant, differentiated and appropriate to need.
  3. Revenues from its own activities that are appropriate to its financial needs.



4. The entity performs an activity that requires flexible forms of administrative action in order to meet special or emergency situations; without this flexibility, the provision of services could be seriously prejudiced.
5. The activity of the entity is aimed at a clearly identified sector or social group which requires attention from specialists in the field.
6. For the proper development of its activity, the parties to which its activities are addressed should participate in the entity's governing or advisory bodies.
7. The entity's activities arise from a decision taken by European Community institutions.

— **Special regulation of independent bodies.** Special regulation is proposed for the “independent bodies”, i.e., those which are not hierarchically dependent on a Ministry or which cannot be addressed in the form of guidelines or instructions issued by the Government or its Departments. Such is the case of the regulatory agencies, which have their own rules, expressed in the Sustainable Economy Act, and which are currently being restructured, and is also the case of the Spanish Data Protection Agency, the Economic and Social Council, the Nuclear Safety Council and the forthcoming Independent Agency for Fiscal Responsibility. The special case of the Bank of Spain could also be analysed in this respect. In particular, the following issues could be regulated:

1. The type of relation with the General State Administration and, in particular, with what the Sustainable Economy Act terms the “Ministry of reference”.
2. The procedure by which their budgets are prepared, presented and integrated into the General State Budget.
3. Their basic organisation, especially as regards the governing bodies: appointment, mandate and termination.
4. The guarantee of independence in the actions of their directors.
5. The publicity to be given to their actions.
6. The type of control of their actions; in this respect, permanent financial control would seem to be appropriate.
7. The economic and financial control conducted a posteriori.
8. If applicable, their fees-based system of funding, as determined under the Fees Act.
9. Parliamentary control of their activity.

— **Participation by the Autonomous Communities in public State-dependent bodies.** Participation by the Autonomous Communities in State agencies is explicitly called for in areas that are specially relevant to regional competencies or interests. The aim of this provision is to effectively coordinate the exercise of the respective government functions and thus achieve the optimum integration of the human and material resources available.

— **Better regulation of the governing bodies of public agencies.** The assumptions and objective criteria to be taken into account should be stipulated as a prerequisite to deciding the composition of the governing bodies of public agencies. This modification would continue the line adopted by the Government in 2012, and could have the following objectives:

1. To address the interest and convenience of the presence of other ministerial departments, and the added value that may be derived from their participation in collegiate governance.
2. To ensure social participation, addressing the interest and convenience of the presence of legitimate representatives of social or economic agents in the sector, who are directly affected by the decisions taken.
3. To prevent the development of bodies that are too broad-based and thus operationally ineffective.



### b) Reforming the regulation of inter-administrative consortia

The inter-administrative consortium structure is well established in Spanish local government, which has often used this type of figure to provide services involving several public administrations. More recently, the formula has also been adopted by many Autonomous Communities, especially Catalonia. The INVESPE currently has records of 21 consortia in which the State has a majority holding, and a further 122 consortia in which it also participates, but with a minority holding. Taking into account this reality, it is considered that the figure of the consortium should be reconsidered in this process of analysing and restructuring the State public sector.

Better regulation of the consortia is needed, and this should be achieved by amending the Legal Regime of Public Administrations and Common Administrative Procedure Act (LRJ-PAC), to regulate the figure of inter-administrative consortia, as the current sketchy approach is insufficient and fails to resolve the doubts that often arise regarding the sector with which a consortium should be affiliated. A start on addressing this question was made with the reform proposal set out in Additional Provision No. 20 in the draft Law on the Rationalisation and Sustainability of Local Government, although we consider that the regulation of consortia should be included in Title I of this Bill, concerning relations between administrations.

### c) Reorganisation of the bodies comprising the public administrative sector

After applying the above-mentioned objective criteria to each of the 144 organisations in this sector, the Sub-Commission carried out an initial evaluation and concluded that there are certain situations and organisational structures whose activity should be reviewed, on the basis of a feasibility plan and with the aim of identifying a specific timetable for action. Fundamentally, this task will involve a general reorganisation of all these agencies, to take place gradually, and with diverse possible outcomes:

1. The undertaking of roles previously performed by another management centre pre-existing in the ministerial structure and organisation.
2. The undertaking of these functions by other bodies belonging to the same or to a different ministerial department.
3. The integration of some of its functions, especially those of an administrative nature, with those of other bodies that carry out comparable activities.
4. The integration of its governing body with those of other entities, although during a transitional stage each entity would maintain its own identity, after the preparation of an action plan to achieve definitive integration in a single entity.
5. The modification of its legal status, and even of the type of entity in question, to better adapt its activity to the purposes and functions assigned.
6. The integration of its organisation and functions with those of other regional or even local agencies that operate in the same area of activity, after a due process of negotiation.

## 5. PUBLIC BUSINESS SECTOR

### A. PRESENT SITUATION

#### a) Area of application

In this section, the Sub-Commission analyses the 227 entities that constitute the sector: 13 public companies, 36 organisations with their own legislation, the Consortium for the construction of the Malaga Music Auditorium, 22 funds not having legal personality and 171 corporations. The 13 public companies include

two special cases: a financial institution, the Official Credit Institute (ICO) and an insurance institution, the Insurance Compensation Consortium.

Most of these entities are affiliated to four ministries, which are those most strongly related with economic and business activities: the Ministries of Finance and Public Administration; Public Works and Transport; Economy and Competitiveness; and Industry, Energy and Tourism.

## b) Aims and functions of the entities in the public business sector

As observed by Arino Ortiz, government intervention in people's lives and the social fabric must be justified by the pursuit of goals of general interest. Government's ultimate purpose is to serve the public interest, and the State is mandated to do so through diverse means or techniques of administrative intervention, ranging from direct regulation to the State's direct assumption of certain activities, either by declaring them to be exclusive to the public sector (and thus excluding individuals) or by addressing them through public business initiatives.

The first of these approaches has traditionally been applied in Spain through the declaration of the activity in question as a public service. The second, on the other hand, has undergone major changes, and has become increasingly common in recent decades: the State has gradually taken control of the production of certain goods, although it has encountered opposition to this process based on the principle of free competition, which is supported and guaranteed by the European Community.

Due to this increasingly prominent new role, the fundamental objective of government activity is now to control and manage the activities that are essential to the community, to ensure that goods and services are provided at an appropriate price and throughout the population for the benefit of a goal that is accepted unanimously: to ensure that all citizens receive the basic necessities for modern life. For this purpose, public ownership is a means, although it may not be the only one.

To organise possible forms of intervention and to achieve the targets that are set, governments can take various approaches, and a very significant element in this respect, especially in the field of public business activity, is that of functional decentralisation.

In the Spanish legal system, the dual approach to the forms of government intervention in economic activity, i.e., management and ownership, is formally undertaken, above all, in the General Budget Act, in which Article 3 provides a detailed classification of the entities that constitute the public business sector, as follows: "The public business sector comprises:

1. Public companies
2. State-owned corporations
3. The entities referred to in paragraphs g) and h) of Section 1 of the preceding article, and which are not included in the public administrative sector".

The entities referred to in the last paragraph are: "g) Public-law entities other than those mentioned in paragraphs b) and c) of this section. h) Consortia with legal personality referred to in Article 6, Section 5 of Act 30/1992, of 26 November, on the Legal Regime of Public Administrations and the Common Administrative Procedure, and Article 87 of Act 7/1985, of 2 April, regulating Local Government, when one or more of the subjects listed in this article have contributed to such consortia, to a majority degree, money, goods or industry, or have undertaken, at the time of their constitution, to provide majority finance to the consortium, provided that their actions are directly or indirectly subject to the decision-taking power of a State body".

On the contrary to the situation regarding the public administrative sector, here, the different types of entities comprising the public business sector have a differentiated form of regulation, and their objectives and modes of action are clearly different. Thus, public companies are regulated, basically, by Act

14/1997, of 26 April, on the Organisation and Functioning of the General State Administration (LOFAGE), while corporations are subject to the provisions of Act 33/2003, of 3 November, on the Assets of Public Administrations, subsequently amended by Royal Decree 1337/2005, of 11 November.

From this distinction and dual regulation, it can be deduced that only public business entities have the status of public body, as defined in the LOFAGE. The fact that the law allows these entities to function as authorities and at the same time to conduct business activities has been frequently criticised, on the grounds that this creates confusion.

As well as the two laws cited above, there are others that affect the operation of the public business sector, especially the consolidated text of the Public Procurement Act, the General Budget Act, the Basic Statute for Public Sector Employees, the Incompatibility Act, the Act on conflicts of interest affecting members of the Government and senior officials in the General State Administration, and the annual Budget Acts, together with various lower-ranking statutes, instructions and even Cabinet Decisions issued to standardise their implementation. These considerations highlight the existence of a wide variety of applicable legislation and fuel the doctrinal debate on the possibility of combining in a single text the rules applicable to the public business sector.

#### a. Public companies

According to the INVESPE, in 2012 there were 13 public companies, affiliated to only four ministries. The Railway Infrastructure Administrator (ADIF), Spanish Airports and Air Navigation (AENA), the Spanish Rail Network (RENFE-Operator), the National Employment Service (SEPES) and the Spanish Maritime Safety Agency (SASEMAR) were affiliated to the Ministry of Public Works and Transport; another four, the Centre for the Development of Industrial Technology (CDTI), the Insurance Compensation Consortium, ICEX Spain Trade and Investment, and the Official Credit Institute (ICO), were affiliated to the Ministry of Economy and Competitiveness; three were affiliated to the Ministry of Industry, Energy and Tourism: Red.es (promoting the Information Society), the Administrative Agency for Naval Construction and the National Institute for Energy Saving and Diversification (IDAE). Finally, one public company, the National Mint (FNMT) was affiliated to the Ministry of Finance and Public Administration.

In addition, there are another 36 entities with a differentiated regime and that are regulated by special laws. This group includes the National Ports Authority and 28 local port authorities, all regulated by Royal Legislative Decree 2/2011, of 5 September, approving the consolidated text of the Ports and Merchant Navy Act. This group is completed by another seven bodies, all affiliated to the Ministry of Finance and Public Administration: the four Free Trade Zone consortia of Cadiz, Gran Canaria, Santa Cruz de Tenerife and Vigo; the Spanish Broadcasting Authority (RTVE) (in liquidation); the Supplier Payment Finance Fund; and the State holding company SEPI. In practice, their regulation and function, especially that of the ports, is similar to that applied to the public companies.

#### b. Corporations

According to INVESPE data there are 171 corporations. The vast majority are affiliated to the above four ministries, which are most actively involved in the production of goods and services, i.e., the Ministry of Finance and Public Administration (108), the Ministry of Public Works and Transport (43), the Ministry of Economy and Competitiveness (7) and the Ministry of Industry, Energy and Tourism (4). In turn, the main companies affiliated to the Ministry of Finance and Public Administration may be affiliated directly, through the business group of the DG for State Assets, or indirectly through the SEPI Group, constituted of companies in which SEPI has direct, majority control. These are classified into four groups: energy, defence, food and the environment, and communication.

The reasons for the existence of corporations in which a majority holding is owned by the State are diverse and complex; furthermore, many are the result of a previous reorganisation, which on occasion failed to reach a successful conclusion. In general, there are three main reasons for maintaining these business assets: some companies have strategic value; others act as instrumental bodies for the administrative organisation; for the third group, it is because they do not present sufficient interest to be acquired in the market.

In the past, additional grounds were put forward, especially the interest in avoiding the status of public-law company in order to prevent the commercial results from contributing to the public-sector deficit. This position is now meaningless, since European Community legislation has extended the concept of public accounting to these corporations and, in parallel, legal clarification has been given to the position of the contracting authority, which is now specifically regulated in the Public Procurement Act, which has blocked the above-mentioned strategy by obliging public authorities to procure goods and services in accordance with the general principles of this Act.

Accordingly, these entities have sometimes undertaken a new role, taking it upon themselves to manage the services required. To do so, in many cases their Statutes have gradually been changed and expanded, as was confirmed by the judgment of the Court of Justice of the European Union of 30 January 2008, with respect to TRAGSA. In that case, the Court ruled that this company constituted an instrumental medium pertaining to the Administration, because the majority of its business activity, and the essential part, was comprised of the contracts entered into with public administrations and, moreover, because it was controlled by the public administration. This ruling by the European Court was of great importance because it allowed public administrations with commercial holdings to use such a company as an “instrumental medium”.

Therefore, and taking into account the different backgrounds and activities of corporations, a more detailed analysis is needed of the functional nature of these entities. This task presents many difficulties, despite the fact that legislation in this field offers an outline of the principles that justify their existence. According to the statute book, the justification for creating either a corporation or a public company is to gain flexibility and agility. In practice, however, corporations are “more distanced” from the administration than are public companies, and may receive injections of private capital.

In the field of positive law, the normative basis for this form of public intervention is now worded more precisely, in Article 138 of Royal Decree 1373/2009, of 28 August, on the Regulations for Public Administration Assets, which states: *“The General State Administration and its agencies, as shareholders or as owners of the equity of the entities referred to in Article 166 of the Public Administration Assets Act, shall pursue the following aims:*

1. *Promote efficiency and economy in the management of the companies or entities*
2. *Identify and inform citizens and the market of the obligations related to services of general interest that the laws or other regulations impose on public companies, as well as the costs associated with these obligations*
3. *Not distort competition, and avoid market distortions arising from business activity, with specific provisos applicable to public service obligations*
4. *Promote the establishment of standards of practice and codes of conduct appropriate to the nature of each entity”.*

Having addressed the development, regulatory justification and detailed analysis of their activity, the following initial classification distinguishes certain types of corporations:

1. Companies that operate in the market as “real companies”. This group is a very small one, and is exemplified by the hotel chain Paradores Nacionales, which competes with others that offer comparable services.

2. The second type is comprised of corporations that act a channel for the administration to interact with the market. The most characteristic example of this is TRAGSA, which intervenes in just this way, as a channel for the General State Administration. Nevertheless, Community law itself only allows such a corporation to compete with other companies to a very limited degree, in order to maintain the principle of competition.
3. The third type of corporation is that which does not actually conduct itself as a trading company in mercantile relations. This constitutes a 'fuzzy' area, since it is doubtful whether its corporate purpose justifies its acting or presenting itself as a trading company. Examples of this type of structure are the State Corporation for Spanish Cultural Action Abroad (SEACEX) and the Spanish Agricultural Infrastructure Corporation (SEIASA). In these cases, the existence of the corporation would be justified by the streamlined performance of its functions and, in particular, with respect to working conditions.

An important aspect of State assets is the State Property Management Company (SEGIPSA), which is expressly constituted as an instrumental channel for action. The tenth additional provision of the Public Administration Assets Act states: "The State Property Management Company, Ltd. (SEGIPSA), whose share capital must be publicly owned, shall be considered an instrument channel for action and a technical service of the General State Administration and of its public law entities and agencies for the management, administration, operation, maintenance and conservation, research, inventory, standardisation, improvement and optimisation, valuation, appraisal, acquisition and disposal of assets and rights that form part of State assets or of other public property, as well as for the construction and renovation of buildings forming part of State property or for administrative use".

In consequence, SEGIPSA is required to perform the work, services, studies, projects, technical assistance, construction and such actions as are directly required of it by the General State Administration and its public law entities and agencies, although such actions by SEGIPSA do not constitute the exercise of administrative powers.

In addition to the entities described, the classification of the public business sector also reflects the fact that corporate State assets include shares, securities, bonds, convertible bonds, rights of first refusal, financial option contracts, option swaps, participating loans and other titles that can be traded on organised secondary markets and that are representative of rights owned by the General State Administration or its public law agencies, even if the issuer is not included among the legal persons listed in the Public Administration Assets Act.

### c. Funds without separate legal personality

The final element of the public business sector is that of the "funds without separate legal personality," an area that has expanded considerably in recent years. These funds respond to the need for a flexible tool that facilitates the management of financial resources intended to be retained for more than one financial year.

At 31 December 2012, the INVESPE listed 22 such funds, of which eight were affiliated to the Ministry of Finance and Public Administration: Amber Venture Capital; Banesto Enisa-SEPI Development; the Food Payment Guarantee Fund; the Central American Integration System (SICA) Liquidation Fund; the Autonomous Community Liquidity Fund; the SME Expansion Fund; the State Fund for Local Investment; and the Fund for Employment and Local Sustainability. Another five funds are affiliated to the Ministry of Economy and Competitiveness: the ICO-Infrastructure Fund; the ICO-SME Fund; the Foreign Investment Fund; the Business Internationalisation Fund; and the Fund for Foreign Investment Operations by SMEs. Three funds are affiliated to the Ministry for Foreign Affairs and Cooperation: the Cooperation Fund for Water and Sanitation; the Collective Insurance Fund for Cooperation Personnel; and the Development Promotion Fund



(FONPRODE). The remaining funds are: the Fund to Support the Diversification of Fisheries and Aquaculture, and the Carbon Fund for a Sustainable Economy (both affiliated to the Ministry of Agriculture, Food and Environment); the Dependency Support Fund (Ministry of Health, Social Services and Equality); the Interport Compensation Fund (Ministry of Public Works and Transport); the State Financial Fund to Promote Internal Trade, and the State Financial Fund for the Modernisation of Tourism Infrastructure (Ministry of Industry, Energy and Tourism).

## c) Revenue and expenditure budgets

The net turnover of the 11 non-financial, non-insurance public companies, i.e. excluding the ICO and the Insurance Compensation Consortium, is €6.04 billion: €2.99 billion in sales and €3.05 billion in services. Among the special organisations, the State Ports Agency alone accounted for €1.06 billion in turnover.

The mixed corporate legal form of these bodies, with the corresponding public service obligations, allows them to receive significant public subsidies, amounting to €1.70 billion. In the 2013 budget, a significant volume of European Community funding is earmarked for Red.es. and the CDTI. Another notable factor is that of the additional revenues and those of an ordinary operative nature received by ADIF and RENFE, amounting to €679 million.

Among the corporations, eight in particular are outstanding, with a turnover exceeding €100 million: the State Lotteries Company (€11.57 billion); the Postal Services (€1.69 billion); the Radioactive Waste Management Agency (ENRESA) (€415.65 million); the hotel company Paradores (€243.90 million); the Prison Infrastructure and Equipment Company (SIEPSA) (€243.03 million); Transport Engineering and Consultancy (INECO) (€224.95 million); Systems Engineering for the Defence of Spain (ISDEFE) (€140.35 million); and the mining company HUNOSA (€114.97 million).

The corporations receiving the highest subsidies are the Postal Service and the Spanish Broadcasting Corporation.

## d) Economic and financial management

### a. Public companies

The budget regime for public companies is stipulated in Article 58 of the LOFAGE, by reference to the general law: "The budgetary, economic-financial, accounting, audit and financial control regime for public business entities shall be as provided in the General Budget Act".

The accounting regime for these companies is set out in the General Public Accounting Plan, approved by Order EHA/1037/2010, of 13 April, which distinguishes between the following entities:

1. Non-financial and auxiliary financial intermediation institutions, in accordance with the General Accounting Plan approved by Royal Decree 1514/2007, of 16 November, and the General Accounting Plan for SMEs, approved by Royal Decree 1515/2007, of 16 November.
2. Credit institutions, in accordance with Circular 4/2004, of 22 December, of the Bank of Spain, on standards for public and confidential financial information, and financial statement formats, as amended by Circular 6/2008, of 26 November.
3. Insurance entities, in accordance with the Accounting Plan for Insurance Companies approved by Royal Decree 1317/2008, of 24 July.
4. Venture capital entities, in accordance with the adaptation of the General Accounting Plan to venture capital entities (Circular 11/2008, of 30 December, of the Spanish Securities & Exchange Commission).



5. Funds without separate legal personality which, by their nature, are subject to specific accounting rules (Resolution of 1 July 2011, of the IGAE).

The diversity of these control systems requires us to conduct a detailed analysis of each type of entity, by reference to the Annual Public Audit Plan for 2013 and the Public Accounts for 2011.

1. **Public companies.** According to the Council of Ministers Decision of 8 January 1999, on the economic and financial regime applicable by the IGAE to control certain public entities, the public companies that, prior to their adaptation to comply with the LOFAGE were not subject to permanent financial control, are subject to financial control by the IGAE, in implementation of the corresponding Annual Audit Plan (eight public companies —AENA, the Centre for Industrial Technological Development, the Institute for Energy Diversification and Saving, ICO, the Public Employment Service, the Spanish Maritime Safety Agency, the National Mint and the Insurance Compensation Consortium— are subject to audit).

Furthermore, in accordance with Article 158 of the General Budget Act, they are subject to permanent financial control. However, the public audit actions stipulated in the Annual Audit Plan may be replaced by a Council of Ministers Decision, at the proposal of the Ministry of Finance and Public Administration and at the initiative of the IGAE. Also subject to public audit are the following, included in the Public Audit Annual Plan (Article 165 of the General Budget Act):

- ICEX: public accounts and compliance audit.
- Red.es: accounts and operative audit.
- Administrative Agency for Naval Construction: accounts audit.
- Renfe-Operator: accounts audit and programme contract.
- ADIF: accounts audit, programme contract and permanent financial control, under Article 39 of Royal Decree 2395/2004.

2. **Entities included in the public business sector, which have their own legislation.** The following 36 institutions are included in this section and its control regime:

- The 29 Port Authorities are subject to accounts audit, compliance and operative audit. The State Ports Authority is only subject to accounts audit.
- The Supplier Payment Finance Fund, according to Royal Decree-Law 7/2012, of 9 March, Article 5, is subject to public audit (public business sector).
- The four Free Trade Zone consortia are subject to specific financial control (except in the case of Tenerife) and accounts audit.
- The State Holding Company (SEPI) is regulated in accordance with Act 5/1995, and is subject to accounts audit.
- The Spanish Broadcasting Corporation in liquidation is subject to permanent financial control and auditing.
- The Fund for Orderly Bank Restructuring (FROB), a public law entity with specific legislation, is subject to permanent financial control (Article 52 of Act 9/2012, of 14 November, on the restructuring and resolution of credit institutions).

#### b. Corporations

The diversity of control systems requires us to perform a detailed analysis of what is applicable to each type of entity, by reference to the Annual Public Audit Plan for 2013 and the Public Accounts for 2011,

according to which corporations and similar entities (i.e., venture capital funds) are subject to private audit, in accordance with company law. Under Article 165 of the General Budget Act, the entities included within the Annual Audit Plan are also subject to public audit (eight such entities are subject to operative and compliance audit). Of the 178 entities, 132 have been audited by private firms.

To implement this control, the Public Administration Assets Act empowers the IGAE to exercise financial control of the entities included in the public business sector, in accordance with Article 17 of Real Legislative Decree 1091/1988 of 23 September, which approved the consolidated text of the General Budget Act.

## e) Personnel management

In all, 35,473 persons are employed by the 13 public companies, although a large proportion of these are concentrated in ADIF and in RENFE-Operator (which account for 27,107 employees). These are followed by AENA and the National Mint with 4,048 and 1,691 respectively. Therefore, issues specifically concerning the personnel management of these organisations are located to a very high degree in the Ministry of Public Works and Transport, and involve relatively homogeneous groups of workers. Total personnel costs exceed €2.15 billion, most of which is accounted for by the Postal Service (€1.36 billion) and the Spanish Broadcasting Corporation (€378.55 million).

## B. PROPOSALS

### a) Modification to the Regulation of Public Business Sector Entities

The dual nature of public business entities, in that they can intervene in the market in accordance with private law, together with the fact that at present the only requirement to be considered a public business entity is the existence of consideration for the services provided, means that greater clarity is needed, to strictly define this business structure, which occupies an intermediate position between public law entities and corporations. Moreover, doubts frequently arise as to whether this intermediate legal position is appropriate for the purposes of public intervention.

The reason for creating such entities is that they enable a more agile form of operation, avoiding the functional rigidities often suffered under administrative law. On the other hand, very careful justification is required for their existence, since each of these entities represents an exceptional form of intervention in areas that, in principle, should be reserved for private initiative.

This lack of specificity is apparent for the two types of entities in the sector: public companies, which can exercise public powers and act, at least partially, in accordance with public law; and corporations, which act entirely in accordance with private law, and which present diverse aims and structures:

1. Those concerned primarily with the production, in a free market system, of goods and services in the public interest, for individual or collective consumption and for a consideration.
2. Those conducting activities of public promotion, offering benefits and services, service management or the production of goods of public interest, whether or not for a consideration, and not operating in a free market system, but in accordance with political planning and management.

**An appropriate definition of public business entities would need to address the peculiarities of the public services provided, the public powers that may be applied, the system to be established for their funding and income under public law, and the fact that their activities are often performed with respect to goods in the public domain** —in short, all the aspects that place public business entities in a situation

of legal superiority over private entities. And in applying these criteria, questions may arise about the suitability of this form for certain public business entities.

The development of corporations raises even more questions about their real purpose and about the reasons for the administration resorting to this form of management. A corporation may constitute an instrument to act in an market in which income cannot be effectively obtained or private investment channelled, but it might also be a mere instrumental means applied in order to achieve ministry objectives, and have nothing to do with what should be the basic objective of such entities, i.e., to engage in trading activity. This heterogeneity of possible goals calls for a complete analysis to be made of each entity, to confirm that its activity matches its true nature, in terms of its objectives, to ensure its existence is really beneficial.

The major doubts raised concern companies created by the State, or agencies that are dependent on it, for purely instrumental purposes, such that their activity is aimed at satisfying the needs of the administration that created them, and not at participating in a free market, in competition with other similar companies.

In response to this reality, **the formal goals of corporations should be clearly specified, their activity effectively supervised and their results given maximum transparency. These stipulations are inherent to the fact that public authorities are their main or unique shareholders.**

In conclusion, the public business sector needs to be reviewed, with the fundamental understanding that its restructuring is not only desirable in terms of rationality and efficiency, but is imperative at a time such as the present, of severe economic crisis.

For similar reasons, the maximum possible uniformity should be sought in the regulation of the other organisations in the public business sector that have been created under purpose-built laws and which mostly differ from the common pattern established in the LOFAGE (this is the case of the entities listed in Additional Provisions 9 and 10 of this Act).

In short, the future regulation of public sector bodies should establish identifying criteria for each type of entity. In the public business sector enterprise, for example, these could be:

1. **The main purpose of activity is to achieve goals of general interest which justify public intervention**, such as:
  - a) Filling gaps in the market that impede the provision of the activity by the private sector (provision of a public good, externalities, information failures, etc.).
  - b) The protection of national security and defence.
  - c) The presence in sectors that are strategic to the economy or society in general.
  - d) Inter-territorial cohesion or balance.
  - e) The redistribution of income among economic and social agents.
  - f) The orderly restructuring of sectors and areas being redeveloped.
2. Most of the entity's financial resources come from its business activity or from other assets for which economic consideration may be obtained.
3. The main source of income is derived from own activity, without requiring transfers from State assets.
4. Staff with special training or qualifications are present or required.

#### **b) Reordering of the entities that constitute the public business sector**

After applying the above objective criteria to each of the 227 organisations in this sector, the Sub-Commission carried out an initial evaluation process, and concluded that there are certain situations and structures whose activity should be reviewed on the basis of a viability plan, with a view to formulating a concrete proposal and time period for action. This review will constitute a general process of reorganisa-

tion for all these agencies, to be carried out gradually and taking into consideration the different alternatives available.

This reorganisation plan will be addressed taking into account the proceedings that have been initiated and the effects of similar operations implemented following the Council of Ministers decision of 16 March 2012 approving the Plan for the Restructuring of the Public Business and Foundation Sector. Continuing the process initiated by the above decision, **within nine months the Government will approve a new Plan for the Restructuring and Rationalisation of the Public Business Sector.**

## 6. PUBLIC FOUNDATIONS SECTOR

### A. PRESENT SITUATION

#### a) Area of application

In this section, the Sub-Commission will analyse the 48 public sector foundations included as such in the INVESPE.

The Ministry of Education, Culture and Sports has the largest number of affiliated foundations (13); this is followed by the Ministry of Economy and Competitiveness (8), Finance and Public Administration (7), Industry, Energy and Tourism (6), Public Works and Transport (3), Employment and Social Security (3), Agriculture, Food and the Environment (3), Foreign Affairs and Cooperation (2), Justice (1), Defence (1), and Health, Social Services and Equality (1).

Under Council of Ministers Decisions of 2011 and 2012, this area is being comprehensively restructured, and in some cases processes of dissolution and liquidation are well advanced.

#### b) Objectives, purposes and functions of public organisations

The right to establish foundations is established in Article 34 of the Constitution, which recognises “the right to create a foundation for purposes of general interest, in accordance with the law” and was developed by Act 50/2002, of 26 December on Foundations, which regulates the public foundation sector, albeit very briefly, in just three articles, Nos. 44-46. In turn, this Act was further developed by Royal Decree 1337/2005, of 11 November, on foundations with national competences, and Royal Decree 1611/2007 of 7 December, approving the Regulations for the Registry of Foundations.

The above Act is mindful of the powers of the Autonomous Communities, and regulates only “State public-sector foundations”. Thus, all the Autonomous Communities have adopted their own rules to regulate foundations in their respective areas.

The content of the law is slight and notoriously insufficient to address the problem of foundations. It merely establishes requirements for their constitution, prohibits them from exercising public powers, and sets out the basic principles governing procurement, hiring, budgeting, accounting and auditing; everything else is referred to the general rules for foundations which the Act itself provides for private foundations. This legislative gap has had repercussions, above all because the initiative to establish public foundations has been improperly used and with an evident lack of concern regarding the control of their management.

In addition, various sectoral laws have considered the functioning of foundations, especially the revised text of the Public Procurement Act, the General Budget Act, the Civil Service Basic Statute, the Incompatibilities Act and the annual Budget Acts, together with various subordinate statutes including Cabinet decisions, which have sought to regularise their operation. This regulatory dispersion makes it difficult to obtain a clear overview and assess these entities. For this reason, consideration has been given to combining in a single text all the regulations applicable to the State public foundation sector and at the same time

overcoming the inadequacy of current regulations. This would be done either through the enactment of a special law or through the amendment of Act 50/2002.

The definition of what is meant by the State public foundation sector is given in Article 44 of the Act, according to which *"foundations are considered to be part of the State public sector under one or more of the following circumstances:*

- a) *They are constituted with a majority contribution, direct or indirect, from the General State Administration, its agencies or other State public sector entities.*
- b) *More than 50% of the foundation's permanent assets are comprised of goods or rights contributed or transferred by the aforementioned entities".*

Regarding the first of these circumstances, when the State provides the majority contribution to the creation of a foundation, then the majority contribution to its constitution is public, the foundation is created as a public body and it remains public until its dissolution. However, it should be borne in mind that the Board may request permission from the Protectorate to detach capital from its equity, such that an allocation of public capital may over time become private, without the foundation ceasing to be a public entity. This fact raises serious doubts, especially about whether or not it makes sense for a foundation to remain permanently affiliated to the public sector by reason only of the initially public origin of its capital.

The 2010 Economic and Financial Report on State Foundations, issued by the IGAE, seems to maintain the criterion regarding the initial contribution, in noting that *"under Article 45 of Act 50/2002, of 26 December, as amended by the second final provision of the General Budget Act 47/2003, of 26 November, a foundation requires prior authorisation from the Council of Ministers to lose its status as a State foundation even if the State's financial contribution falls below 50%".*

The second criterion is the permanent funding of over 50% of the foundation's capital by public entities. One of the problems with public sector foundations is precisely that of their funding from public resources. When the Act refers to the foundation's 'permanent' assets, this must be understood to refer to amounts received to fund its overall activity, that is, to amounts transferred or to periodic or permanent subsidies that are not linked to specific objectives but to normal functioning of the foundation. Therefore, this would exclude grants obtained for specific activities, whether nominative in the budget or through a competitive bidding process. A different interpretation would mean that many private foundations could become public by this channel, as many of these entities are maintained, to a large extent, by subsidies.

Moreover, the rule applies to goods or rights provided or assigned by public sector entities. That is, goods or rights transferred free of charge. Accordingly, this concept does not consider the resources obtained through contracts or concessions from any public sector entity.

We must also consider the permanency requirement imposed by this rule, as the fundamental problem is that of determining what happens when the State's permanent funding falls below 50%. As noted above, Act 50/2002 requires that the acts or transactions that involve the loss of State public sector foundation status or its acquisition in the case of a pre-existing foundation require Cabinet approval (Article 45). From this, it follows that State funding may be reduced to below 50%, but the foundation will maintain its public status in the absence of a decision to the contrary by the Council of Ministers.

Public sector foundations are private-law legal persons, even if the State has a majority participation in their constitution or in their equity, and despite the existence of public control over the activity conducted by these entities. Indeed, it is the justification of a foundation that poses the main problem concerning the figure of public sector foundations. It is essential therefore to define why a private-law entity is required to meet needs that, in principle, should be covered by government. Although these needs may vary, in practice there are three main cases:

1. **Areas in which an administrative activity must be addressed and which government departments, due to budget constraints, cannot cover** (for example, cultural foundations). These aims



are pursued using the same participation mechanisms to promote areas of public interest in which the private sector can participate.

2. At other times, the use of these entities, due to their legal form, may be beneficial to **allow public-sector entities to deal with individuals in a more direct way than would be the case of government departments**, which on certain occasions must inevitably be governed by contract law. Therefore, when these foundations are used simply in order to provide public services, this will constitute an evident avoidance of administrative law.
3. In certain cases, the rule itself calls **for institutions such as foundations to perform particular functions that are closely related to public affairs**.

While Act 50/2002 regulates the creation of foundations and the limits to their nature and activities, and even their legal status, in this respect special reference should also be made to foundations with specific regulations; these foundations are not subject to the stipulations of the Foundations Act, being specifically exempted from the general legal regime. Instead, they are regulated by specific rules.

1. **University Foundations.** These are governed under Article 84 of Organic Act 6/2001, on Universities. The foundation's endowment or capital contribution and any other contributions are subject to the rules established for that purpose by the corresponding Autonomous Community. Such foundations are accountable in accordance with the same terms and procedures as are the universities themselves.
2. **Public health foundations.** These are regulated by Article 111 of Act 50/1998, which defines them as "public bodies, affiliated to the National Institute of Health, governed by the provisions of this Article".
3. **Foundations affiliated to the National Heritage.** These are regulated by National Heritage Act 23/1982, of 16 June, and by the regulations approved under Royal Decree 496/1987, of 18 March. The Protectorate for these foundations is exercised by the King, with the powers conferred by the corresponding legal provisions. The assets of these foundations, which are intended for the direct fulfilment of their respective purposes, enjoy the same tax exemptions as those in the public domain of the State and are inalienable and indefeasible, subject to the provisions of the specific legislation on the disposal of such assets.
4. **Foundations of religious entities.** These are omitted from the scope of application, and thus from the rules, of the Foundations Act, under the Agreements with the Catholic Church and the Agreements and cooperation agreements between the State and other churches, denominations and religious communities, as are the foundations created or promoted by them.
5. **Foundations constituted in accordance with Act 15/1997, of 25 April, enabling new forms of managing the National Health Service.** According to the Foundations Act, these foundations will continue to be governed by their own specific regulations, with the provisions of Chapter XI being applicable in a supplementary manner.

In accordance with this rule, various research-oriented and university foundations of this nature have been created (the Research Foundations of Puerta de Hierro University Hospital, Ramón y Cajal Hospital, San Carlos Clinical Hospital, La Paz University Hospital, Getafe University Hospital, La Princesa University Hospital and Son Dureta University Hospital).

6. **Foundations linked to political parties.** According to the seventh additional provision of the Foundations Act, foundations linked to political parties are governed by the provisions of the Act, and their resources may be obtained from public funding (through the budgets of the appropriate public authorities in the terms set forth in the applicable budget legislation) and/or the corresponding public announcements.



### c) The creation of foundations and relations of supervision and political control

According to Article 45 of the Foundations Act, as amended by the second final provision of Act 47/2003, of 26 November, with respect to the creation of foundations, “the constitution, transformation, merger and extinction, and the acts or transactions involving the loss of status as a State public-sector foundation or the acquisition of State public-sector foundation status by a pre-existing foundation shall require prior approval of the Council of Ministers”.

This act of ultimate control is reinforced by the Act when it states that, furthermore, “the authorisation file shall include a report, based on data provided by the Ministry of Finance and Public Administration, in which, among other aspects, reasons are given to justify or to explain why it is considered that the goals of general interest would be better achieved by means of a foundation than by other legal forms, public or private, that are provided for by current regulations”. With a similar purpose, the same Article requires that when a foundation is created, a financial report must be presented, based on data provided by the Ministry of Finance, to justify the sufficiency of the capital initially acquired for its activity to begin and, where appropriate, future commitments to ensure its continuity.

The constitution of the foundation also requires the provision of its notarised charter or articles of incorporation, which must state, at least, the circumstances provided for in Article 10 of the Foundations Act, of general applicability.

Once the foundation has been established, its trusteeship and public control are exercised by two institutions or mechanisms, the Board of Trustees and the Protectorate:

1. In the constitution of a State public-sector foundation, or the acquisition of this status by a pre-existing one, the majority of the members of its Board of Trustees must be appointed by State public-sector entities. The Board is the foundation’s governing and representative body and, in the case of public sector foundations, is usually composed of senior officials from the controlling Ministry: its president is usually the Minister or the Secretary or Under-Secretary of State, and its members usually include DGs or Deputy DGs. Notwithstanding this majority presence, when a private entity provides capital, it may be represented on the Board.
2. The Foundations Act regulates, in general and therefore for all foundations, the figure of the Protectorate, to be exercised by the General State Administration with respect to foundations within the State’s area of competence. Its basic purpose is to ensure the proper exercise of the right of foundation and the legality of the constitution and operation of foundations.

The operating rules for foundations are set out in their statutes. The Board is responsible for taking the most significant decisions, regarding aspects such as compliance with the foundation’s goals, the diligent management of the goods and rights that constitute its assets, approving the annual accounts, deciding on participation in corporations, drafting the foundation’s action plan, amending its articles, determining the use made of revenues and receipts and deciding upon mergers, or the dissolution and liquidation of the foundation.

The importance of the functions attributed to the Protectorate, together with its authority and the fact that its members serve the interests of the public administration, has some drawbacks: first, the trustees’ disconnection or lack of real knowledge of the activities carried out by the foundation’s management, which is responsible for day-to-day control. Second, the liability imposed on trustees by Article 17.2 of the Act, which states that “the trustees shall be jointly and severally liable to the foundation for any harm or prejudice caused by any of their acts that are contrary to law or its statutes, or performed without the diligence required of those holding this position”.

The functions attributed to the Protectorate in the Act can be classified as follows: to provide support, initiative and advice, concerning the process of constitution, the Board of Trustees, the foundation’s assets, compliance, the amendment, merger and termination of foundations, and the exercise of legally-permissible actions.

An aspect of special interest is that the law does not require the Protectorate to exercise over public sector foundations any control other than that stipulated for private foundations; neither is any provision made for special forms of effective power to be exercised by the ministry to which the foundation is affiliated. It should also be noted that in most cases the Protectorate intervenes after the fact; thus, a system of prior authorisation has been replaced by one in which the Protectorate is informed of acts or transactions carried out. These can be then challenged before the competent court, if considered contrary to law, and legal action may be taken against the Board members considered responsible.

For all these reasons, in general practice government departments actually exercise control through the Board of each foundation, in cases in which the Ministry's Board members can play a significant role in influencing the Board's discussions, in areas such as the budget, the appointment of directors, or general lines of action, although, as mentioned above, in most cases this is not a real possibility.

With respect to the activity of foundations, Article 46.1 of the Foundations Act states that:

*"1. State public sector foundations are subject to the following limitations:*

- a) They cannot exercise public powers.*
- b) They can only conduct activities related to the scope of competence of the State public sector entities that created the foundation, and their activities must always be directed toward achieving the goals established by these entities. No assignation of powers to the foundations is presumed, unless expressly stipulated in the corresponding legal provision".*

The prohibition from exercising public powers derives from the fact that foundations, both in their legal personality and in their legal status, are essentially private, and thus are unable to exercise public powers, or manage services involving the exercise of authority, or activities involving the execution of public functions.

The second paragraph, relating the foundation's activity with the competences of the founding body, means that foundations may only perform activities that are related to the competence of the State public sector entities that founded them, and their actions must be subordinated to the founding body's interests. At the same time, the law prevents foundations from exercising any other competences.

These two aspects are analysed in detail by the State Legal Service, in its report of 9 March 2000 (ref. 4/00), which concludes that "it would not be legally admissible for a public entity to constitute a foundation whose goals were to exercise functions and duties that are legally assigned to the public entity that created it in the exercise of its powers, thus annulling the competence of the public legal person; in other words, it is not legally permissible that through the constitution of a foundation by a public entity the latter should transfer some or all of its powers to the foundation created by it".

With respect to the control of administrative acts and appeals, in accordance with Article 82.1 of Act 50/1998, foundations are private legal entities, and so their actions are not administrative acts. Therefore, their actions may be heard by the ordinary courts, and are not subject to contentious-administrative litigation. Furthermore, under Article 40 of Royal Decree 1337/2005, of 11 November, resolutions issued by the Protectorate are in themselves administrative acts, and conclude the administrative procedure.

The Report by the State Legal Service (Ref: R-780/2012) provides a detailed analysis of the requirements for a foundation to be deemed to be an instrumental resource. To decide this question, the Report examines the fulfilment of the above requirements by a particular foundation in order to decide whether or not its status as an instrumental resource of the General State Administration should be maintained. According to the authors of the Report, an examination of the specific circumstances involved reveals that although the General State Administration does exert organisational, strategic and asset control, because there are doubts concerning the second of the requirements stipulated, i.e., whether the essential aspect of the activity of the instrumental entity is carried out for the entity or public authority under which the founda-

tion is stated to constitute such a resource, for reasons of prudence and legal certainty it is not advisable to adopt a broad or flexible interpretation of the requirement in question, until an express regulation in this respect is issued, or at least a ruling by the European Court of Justice in support of this interpretation. The Report concludes, "it is necessary to review the classification of this foundation as a resource or technical service of the General State Administration".

The development of public foundations in recent years has raised some doubts about the overlap between the aims of a foundation and the functions assigned to the ministerial body acting as the Protectorate, although the conclusions drawn will necessarily depend on the case in question. In any case, and as noted above, it is not unusual for a foundation, ultimately, to become the means by which the supervisory Department implements its powers.

Another key issue in this analysis of the evolution of foundations is that they may conduct economic activities whose purpose is related to that of the foundation or are complementary or incidental to it, whilst remaining subject to the rules of fair competition. This aspect has been analysed in Report 160/2007 by the State Legal Service, according to which foundations are entitled to perform commercial activities when these are related to the foundation's stated goals.

Article 24.2 of the Foundations Act recognises that they "may participate in corporations when there is no personal liability for corporate debts. When a foundation has a majority participation in a corporation it shall inform the Protectorate of this circumstance as soon as it occurs". If the foundation receives by any reason, either as part of its initial endowment or at a later time, an interest in companies in which it is personally liable for corporate debts, this participation must be sold unless, within one year, the companies have been converted into a form in which the foundation's liability is limited.

Together with these general limitations, the State Legal Service published a report (R-18111) analysing the possible participation of a State public sector foundation in an economic interest group, and concluded that such a possibility was prohibited by Article 24 of the Foundations Act.

#### d) Revenue and expenditure budgets

The sum of the fees, sales income and other ordinary revenue of the 48 public foundations, in their budgets for 2013, amounted to €147,477,000, and total operating subsidies amounted to €247,349,000. In view of the fact that, in addition, a large proportion of the fees is provided by the General State Administration, we conclude that the foundation sector is heavily dependent for its revenues on the budgets of the various ministries involved, and that their ability to obtain financial resources elsewhere is limited to very sporadic cases.

In some cases, in addition, foundations can participate in the market and obtain revenues, as they are entitled to conduct business or commercial activities whose purpose is related to that of the foundation or complementary to it. Thus, a sales revenue of €65,517,000 is forecast for 2013, earned mainly by the International and Ibero-American Foundation of Public Administration and Policies (FIIAPP), the Royal Theatre, the EOI Business School and the Thyssen-Bornemisza Collection. In contrast, government subsidies account for more than double this amount, at €163,861,000, while EU funds provide a further €19,973,000.

Among the expenses of the foundations, personnel costs are a very important item, amounting to €125,803,000, representing the cost of almost 3,000 employees. Supplies and other business expenses represent a total cost of €193,228,000.

Analysis of their activity reveals that foundations can act as mere instruments for channelling public aid to third parties, without adding value, and in practice performing activities that actually correspond to the Protectorate ministry, but which are unaffected by the controls applicable to government administration. The amounts in question are considerable; according to the General State Budget for 2013, the total contributions by foundations in the form of "aid and other expenses" amounted to €56,749,000. 91% of these

expenses were incurred by six foundations: the Occupational Health and Safety Foundation, the Spanish Science and Technology Foundation (FECyT), the Biodiversity Foundation, the Universidad.es Foundation, the SEPI Foundation and the ENRESA Foundation.

## e) Economic and financial management

Article 46.3. of the Foundations Act establishes that with respect to their budget, accounting and audit, foundations are governed by the provisions of the General Budget Act that are applicable to them. However, a special aspect of such entities is that, in accordance with the provisions of Act 17/2012 of 27 December on the General State Budget for 2013, the budgets of State public sector foundations are deemed to be estimative in nature. Regarding their accounting systems, public sector foundations are governed by Royal Decree 1491/2011, of 24 October, by which the General Accounting Plan is applied to non-profit entities.

The management of foundations is controlled by auditing, as stipulated in Article 167.3 of the General Budget Act, according to which “The auditing of the annual accounts of State public sector foundations, in addition to the purpose set out in paragraphs 1 and 2, shall confirm, when so required in the annual audit plan referred to in Article 165 of this Act, the foundation’s compliance with its stated goals and with the principles to which its activity must adhere as regards staff recruitment, procurement and the disbursement of funds in favour of the foundation’s beneficiaries when the latter resources are obtained from the State public sector. The audit process shall also include verifying the implementation of the operating and capital budgets”.

However, the diversity of control systems applied requires us to perform a detailed analysis for each type of entity, by reference to the Annual Audit Plan for 2013 and the Public Accountability Plan for 2011.

Therefore, foundations included in the Annual Public Audit Plan (Article 165 of the Annual Budget Act) will be subject to both private and public audit. Such foundations are usually those that have no statutory audit obligation because they do not exceed the limits established in the corresponding legislation.

Of the 48 foundations that existed in 2013, 30 are subject to account and/or compliance audit, and 12 are subject to private audit. Of the remainder, either the corresponding information is not available or they are not subject to control. In addition, the Thyssen-Bornemisza Collection Foundation is subject to cash budget control and to accounting deficit control.

It is significant that the Court of Auditors, in its audit report on the Lyric Theatre Foundation for 2006 (Report 853) of 22 December 2009, observed that the objectives of the audit were to: 1) verify compliance with the laws and regulations to which the Foundation is subject; 2) to examine the Foundation’s annual accounts for 2006; 3) to evaluate the Foundation’s systems and procedures to monitor, manage and control the activities performed; 4) to examine whether the Foundation’s activities comply with its stipulated purpose and, to the extent possible, the reliability and sufficiency of the information supplied by the Foundation, as regards its duty to comply with the principles of effectiveness, efficiency and economy in its management.

However, the effectiveness of these controls may be unsatisfactory, as they are applied a posteriori, and thus measures in response to a breach of regulatory standards may be delayed. Moreover, those who may actually be harmed by any violation of legal principles by the foundation (in its procurement of goods and services, personnel hiring, grants, etc.) cannot enforce their rights, as the review nature of the jurisdiction may be ineffective unless applied through an award of financial compensation, since in most cases it will be impossible to restore the prior situation of legality. In addition, the consequences of a breach of the rules or principles of procurement could have significant economic consequences for the State if it is declared in breach of European law by the European Union Court of Justice.

In view of these considerations, the question arises as to whether the regulations applicable to government administrations, aimed at ensuring effective compliance with the principles of efficiency and economy, can be enforced with respect to public sector foundations.

As observed above, the special rules applicable to each case determine the standards and regulations for the public sector foundation concerned. Apart from these rules, foundations are entities that are governed by private law, but ultimately they are dependent on government administrations that disburse public funds. In the early days of these foundations, and in the absence of other regulation, the Court of Auditors published a report on the auditing of the State public sector foundations created by the Carlos III Institute of Health (Official Parliamentary Gazette (BOCG), Series A No. 260, 19 May 2006) noting that although the principles of competition and publicity in procurement were not directly enforceable on State public sector foundations under the legislation in force during the years in question (until 2002), they were required indirectly through the foundation's belonging to the public sector, which represented the ultimate guarantee of the principles of efficiency and economy required of all management of public expenditure, in accordance with the provisions of Article 31.2 of the Spanish Constitution and of Article 9 of the Organic Act regulating the Court of Auditors.

In consequence, it is generally necessary that the principles of efficiency and effectiveness in the management of expenditure should be required of public sector foundations as a guiding criterion in their daily management. Thus, in the regulations that apply to government administrations, and as a reflection of the aforementioned principles, reference should be made to the procedures applicable to foundations in order to achieve greater efficiency and effectiveness in the management of public spending.

#### f) Personnel management

The creation and development of public foundations has led to a breakdown of the common regulatory system for public employees. It is now necessary to reconsider and perhaps change this system completely to bring it into line with a reality of public service that has changed dramatically since the Foundations Act was adopted.

Most especially, the possibility that public foundations may take their own decisions regarding personnel selection, and even establish their own work and remuneration conditions is neither consistent nor acceptable in a type of organisation whose funding is mainly public and whose basic purpose and many of whose activities are conducted in accordance with the instructions of Boards of Trustees consisting of representatives from the supervisory Ministries concerned. In other words, their de facto activities are very close to and practically identified with public services.

#### g) Asset management

The existence of an initial endowment and of the foundation's own assets is the most characteristic and idiosyncratic aspect of foundations; the existence of these funds is a guarantee of the foundation's continuity and the primary source of its income and resources. For this reason, and as a general rule, the Statutes of foundations state that *"The Foundation's assets may consist of any kind of goods, rights and obligations that are susceptible to economic assessment, and may be located anywhere"*.

The nature of these assets is clearly differentiated from that of the assets of government administrations. Article 3.2 of the Public Administration Assets Act provides a clear definition that leaves no doubt as to its scope: *"The assets of government administrations consist of their goods and rights, whatsoever their nature and title of acquisition or means by which they have been assigned"*.

The goods that constitute the endowment and the rest of the foundation's assets, together with its profits, rents or products, must be used for the stipulated purposes of the foundation, with no limitations other than those established by law.



A more complex question is that of the assignment of the foundation's assets, which is regulated in Article 73 of the above Act, and according to which, "1. *The goods and other rights of the General State Administration may be ascribed to public bodies that are dependent on it, to be directly employed in furtherance of a service within the foundation's area of competence, or to comply with its own aims. In both cases, this assignment will implicitly mean the allocation of the good or right, which will become part of the public domain*". To this end, the DG for State Assets will verify the application of the goods and rights to the purpose for which they were assigned, and to this effect may take the measures considered necessary.

In this regard, some statutes expressly provide for the use of goods and rights that are assigned by the originating administration, as is the case with the Lyric Theatre Foundation, whose statutes ascribe it to the Royal Theatre Real and the Zarzuela Theatre.

The disassociation of assets for failure to comply with the foundation's stipulated purposes is carried out by a similar procedure, such that should a foundation cease to be necessary for the attainment of its goals, its assets may revert to the originating administration.

The sale, onerous or otherwise, and the encumbrance of goods and rights that form part of the endowment, or that are directly linked to the fulfilment of the foundation's goals, will require the prior approval of the Protectorate.

Other acts for the disposal of assets and rights must be communicated by the Board of Trustees to the Protectorate, which may exercise the corresponding liability actions against the Board members should their decisions be considered prejudicial to the foundation.

## B. PROPOSALS

### a) Amendment to the regulations on public sector foundations

Currently public sector foundations are regulated by Foundations Act 50/2002, of 26 December (Articles 44-46), and by its regulatory development implemented by Royal Decree 1337/2005, of 11 November, on public sector foundations. However, the substantial evolution that has taken place in the field of foundations in recent years requires us to differentiate two basic types, which reflect real differences and should be taken into consideration in future regulation.

1. The first group is that of foundations created by the government administration to perform an instrumental function. In practice, such foundations perform similar functions to those of other administrative bodies. In these cases, funding from private entities is insufficient, and they are funded almost exclusively by State contributions. The application of the Foundations Act to this type of body is often inadequate.
2. The second group has a high degree of social presence, including its funding, and performs functions that are clearly differentiated from those of administrative bodies. This type is more similar to that foreseen in the Foundations Act, although its heightened social role could lead it to the opposite extreme, in which the administration merely provides finance for the actions of others. In such a case, the capability for strategic management capacity is diluted and in practice the functioning of these bodies is similar to that of grant-funded entities.

Apart from the heterogeneity of the real-world situations described, the contents of the current rules on foundations, concerning their justification, creation, operation and liquidation, is clearly insufficient, because of their insufficient scope and because they do not properly address the activity currently performed by a significant number of public foundations. Specifically:



1. The widespread use of this figure by government administrations; at present there are 48, but there have existed up to 61.
2. The fact that the activities of some fit very awkwardly, if at all, into the Foundations Act and could exceed the bounds defined in Article 46.2 of this Act.
3. The importance of public funding, which constitutes the majority contribution to a large number of public foundations, and the scant contributions obtained from private entities or the foundations' commercial activity.
4. The lack of consistency between this legislation, which was designed primarily for private foundations, and the General Budget Act, which considers them to be part of the State public sector and therefore subjects them to the limitations and controls established for such entities.

The current Foundations Act was drafted and viewed as legislation enabling the application of a recognised constitutional right, not as an instrument for the use of government administrations, which is what in practice public foundations have become. Therefore, our aim is now to fill the legal vacuum that has been created by a Foundations Act that has been overwhelmed by a reality that is much more complex than had been foreseen. Accordingly, there must be a comprehensive renovation of the regulation of public sector foundations.

This regulatory amendment would incorporate **a wide-ranging reconsideration of the purposes and activities of foundations, and would produce the disappearance of some elements that have stimulated their creation, in particular by extending to these bodies the system of control that is normally applied to public sector entities. The content of this amendment or new regulation would include at least the following aspects:**

1. **The objective circumstances and assumptions appropriate for the constitution of a State public sector foundation.**
2. **The formalisation of its constitution and the assignation of its Protectorate to the relevant Department.**
3. **Determination of the form of Protectorate** and the manner in which the control of timeliness and effectiveness should be exercised by the supervisory Ministry.
4. The creation of a **common budget structure** for all foundations.
5. The **economic and financial control** of foundations' activities, under the permanent financial control system, although this could be relaxed for certain operations at the proposal of the IGAE, regardless of whether or not the foundation has an accredited delegate comptroller.
6. **The personnel selection system and approval and modification of the foundation's job classification records.**
7. The **procurement system** for foundations.
8. A detailed description of **foundations' areas of competence and explicit prohibition of their use of administrative powers**, especially those involving the management of grants obtained from public funds or any other power involving the performance of administrative acts.
9. The conditions and form of extinction and liquidation of public foundations.

#### b) Reorganisation of public sector foundations

After applying the above objective criteria to each of the 48 state public sector foundations, the Sub-Commission conducted an initial evaluation, and concluded that there are certain situations and structures whose activity should be reviewed on the basis of a feasibility plan, with a view to formulating a proposal and a firm timetable for action. Overall, this task will constitute a general process of reorgani-

sation that will affect all the public foundations, taking place gradually and after considering the various alternatives.

In implementing this reorganisation, the proceedings already initiated will be taken into account, together with the effects of similar operations carried out following the decision in this respect by the Council of Ministers, approving the Plan for the Restructuring of the Public Business and Foundation Sector.

## 7. RESTRUCTURING OF THE STATE PUBLIC ADMINISTRATION, BUSINESS AND FOUNDATIONS SECTORS

The Sub-Commission on Institutional Management has analysed all currently existent public bodies and organisations, assessing the criteria discussed in the above sections to be applied in justifying the individual existence of entities with separate legal personality and therefore endowed with autonomy to conduct the activity assigned to them.

As a result of this analysis, together with the reorganisation proposals set out above, the following proposals are made:

1. Autonomous bodies to be abolished, and their resources reincorporated into the corresponding ministerial organisation, which will undertake to perform the functions formerly attributed to these bodies:
  - The Armed Forces Horse Breeding Organisation
  - The Youth Council
2. Autonomous bodies to be amalgamated and integrated into others, with more general aims and contributing more resources and activity:
  - El Pardo Experimental Hydrodynamic Channel: to be integrated into the National Institute for Aerospace Technology (INTA)
  - Military Construction Service: to be integrated into the INVIED
  - National Consumer Institute: to be integrated into the Spanish Agency for Food Safety and Nutrition (ASEAN)
3. Autonomous body to undertake the functions and resources of a management centre formerly affiliated to the ministerial organisation:
  - Women's Institute: to perform the functions of the DG for Equal Opportunities
4. Agency whose special configuration must be adapted to comply with the general rules applicable:
  - Holy Places of Jerusalem Board
5. Social Security administrative entities and common services to be merged into a single entity:
  - National Social Security Institute (INSS)
  - Marine Social Institute (ISM)
  - General Treasury of the Social Security (TGSS)

6. Abolition of joint mutual funds for occupational accidents and diseases
7. Consortia to be abolished
  - Solar Decathlon Consortium
  - Consortium for the construction of the Malaga Music Auditorium
  - Zaragoza Climate Change Research Institute Consortium
  - Unification of the eight CIBER consortia into a single legal entity; centralisation of economic and administrative management, to prioritise and optimise research investment
8. Foundations to be abolished, and their resources integrated into the ministerial organisation, other public entities or other foundations:
  - MAEC-AECID Student Residence Foundation: to be integrated into the EOI Business School Foundation
  - Ibero-American Foundation for the Promotion of Marine Culture and Science (FOMAR): to be liquidated and abolished
  - AENA Foundation: to be integrated into the Spanish Railways Foundation within the newly-formed Transport Foundation
  - Foundation for the International Promotion of Spanish Universities, Universidad.es: to be integrated into the Autonomous Agency for European Educational Programmes
  - Juan José Workshop Foundation: to be liquidated and abolished
  - National Glass Centre Foundation: its management is to be undertaken by the EOI Business School Foundation, under conditions to be determined
  - Centre for Economic and Business Studies Foundation (CECO): to be integrated into ICEX.
  - National Reference Centre for the Application of Information Technologies (CENATIC): to be integrated into the public entity Red.es
  - Energy City Foundation (CIUDEN): to be partially integrated into the National Institute for Energy Saving and Diversification (IDAE), except museum activities
  - Spanish Foundation for Crafts Innovation: to be integrated into the EOI Business School Foundation
  - Foundation for the Development of Occupational Training in Coal Mining Areas (FUNDES-FOR): to be liquidated and abolished
  - Spanish Aquaculture Observatory Foundation (OESA): to be integrated into the Biodiversity Foundation or into the ministerial organisation
  - ENRESA Foundation: to be integrated into the ENRESA corporation.
9. Foundations that will cease to be considered public foundations
  - Spanish Aeronautics and Astronautics Foundation
  - Marine Museum of Galicia Foundation
  - Canary Isles Foundation for the Port of Las Palmas
  - Open University (UNED) General Foundation
10. Foundations whose Ministry of affiliation and, where appropriate, Protectorate, will be changed:
  - Foundation for Victims of Terrorism: to be transferred to the Interior Ministry

11. Foundation that will become a public body in order to implement the participation and integration of resources owned by the Autonomous Communities in the same field:

- National Agency for Quality and Accreditation Foundation (ANECA)

12. Public entity to be abolished, and its resources integrated into the ministerial organisation, which will perform the public functions formerly assigned to this body:

- Administrative Agency for Naval Construction

13. Corporations to be abolished:

- Rail Logistics and Transport Company SA (LTF)
- Stevedoring Company of the Port of La Gomera
- Stevedoring Company of the Port of La Estaca (El Hierro)
- Broadcasting Programmes and Operations Corporation SA (PROERSA)
- La Almoraima Corporation SA

14. Autonomous bodies and agencies providing certain services or activities:

Training organisations:

- Centre for Legal Studies (CEJ)
- Institute for Fiscal Studies (IEF)
- National Institute of Public Administration (INAP)
- Centre for Political and Constitutional Studies (CEPCO)

Research organisations:

- Spanish National Research Council (CSIC)
- Centre for Energy, Environment and Technology Research (CIEMAT)
- National Research Institute for Agriculture and Food Technology (INIA)
- Oceanographic Research Institute (IEO)
- Geological Survey of Spain (IGME)
- Carlos III Health Institute
- Canary Islands Astrophysics Institute (IAC)



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