

# The State's Disloyalty to Catalonia

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THE CURRENT STATE OF AFFAIRS

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## Introduction

The aims of this report are to describe the extent of non-fulfilment of the principle of institutional loyalty by the State of Spain with respect to Catalonia, and the inequalities this brings about; to draw up a balance, which does not pretend to be exhaustive, of the main instances of non-fulfilment by the State and trespassing on the powers of the Generalitat; and to quantify the amount of outstanding debt, which is making the financial situation of the Government of Catalonia more difficult.

The principle of institutional loyalty is set forth in the Statute of Autonomy of Catalonia (EAC) and the Organic Law for the Financing of the Autonomous Communities (LOFCA), and it is defined as “the determination of the positive or negative impact that the general dispositions approved by the State have on the Autonomous Communities , with regard both to income and to new spending obligations”.

But it is evident that the principle of institutional loyalty also has another dimension, one that goes beyond the direct calculation of income and expenditure, since it is also related to the institutional loyalty that must preside collaboration between different public authorities and respect for the division of powers established by the Spanish Constitution, as has been made clear on several occasions by the Constitutional Tribunal.

The Constitutional Tribunal maintains that the principle of subjection stipulated in article 9.1 of the Spanish Constitution implies that the public authorities have a duty of loyalty “in the exercise of their own powers to ensure they do not obstruct the exercise of the powers of others”. (Decision of the Constitutional Tribunal 46/1990, of 15 March, FJ 4.) Similarly, the Consultative Council, in their Decision no. 279, of 29 January 2007, affirmed in its summary of the constitutional jurisprudence, that:

“Loyalty is expressed as the obligation to mutually respect the respective powers (...), which imposes, both on the State and on the Autonomous Communities, the obligation to exercise their respective powers while respecting the powers that pertain to another public authority”. (F V.2.C)”

On the other hand, it has to be borne in mind—as this document points out with many specific examples—that the indefinite extension in time of an action on the part of the State constitutes a direct contravention of the constitutional principle of the equality of all citizens. To put this another way, the main direct consequence for the public as a whole of institutional disloyalty practised by the State of Spain is increased inequality and discrimination between citizens depending on the region in which they happen to live. The case of the principle of ordinality makes this acutely evident: while in Catalonia the taxable capacity of its fellow-citizens is clearly above the State average, the per capita public resources available are clearly below average.

To analyse and describe the degree of institutional disloyalty in the State of Spain and the inequalities it brings about, this report has been divided into three analytical areas:

- 1) The first of these details the action of the government of the State with reference to language, education, culture, social protection and democratic values. The conclusions it draws from this are:
  - The State has never had the slightest desire to show off its plurinational makeup and its diversity of languages, never implementing or promoting any regulations that would allow Catalan to be present in any State-level or international institution. Right from the start of the Transition to Democracy, it has never allowed Catalan to be present in the Spanish parliament—Congress and Senate—nor its validity on an equal footing with respect to Castilian either in the general State administration nor in the administration of justice. Nor has the presence of Catalan been encouraged in international organisations, such as its use in the European Parliament. And, more recently, when promoting “Spain” as a brand, contrary to the Constitution it has sought to define Castilian as *the* language of Spain, minimising the fact that there are other Spanish languages (Article 3 of the Spanish Constitution).
  - The approval of the preliminary draft of the Organic Law for the Improvement of the Quality of Education (LOMCE) reveals the State government’s disregard for Catalan language and culture in education, and means it will be impossible to maintain the inclusive system of schooling and the system of linguistic immersion.
  - The progressive abandonment of Catalan culture in the State government’s general budget and the unequivocal backing of Madrid, ahead of Barcelona, as a leading cultural centre at the State level.
  - The continual invasive actions by the State of social welfare policies, added to the prolongation of institutional disloyalty, means that there is no respect for the principle of equality and the Government of Catalonia has less resources for the implementation of social policies.
  - From Decision 31/2010 of the Constitutional Tribunal against the Statute of Catalonia, which had been approved in a referendum by the people of Catalonia to the appeal against Resolution 5/X of the Parliament of Catalonia, which approves the Declaration of Sovereignty and the right of the Catalan people to decide, the State has opposed any attempt to use democratic, legal channels to modify the current political status of Catalonia.
- 2) The second area of analysis examines the institutional loyalty of the State from the point of view of the allocation of powers and respect for self-government. This is made evident in:

- The paralysation of bilateral relations and refusal to convene Generalitat-State Bilateral Committees and other mixed commissions for which there is provision with a view to enabling the implementation of the Statute.
  - Refusal to negotiate and approve transfers [of powers] pending implementation which are defined in the existing Statute of Autonomy, or to implement other provisions of the Statute which the Constitutional Tribunal considers legitimate.
  - Reiterated non-compliance with definitive decisions of the Constitutional Tribunal and the chambers of the Supreme Court and the National Court that deal with administrative disputes, such as, for instance, the transfer of powers regarding grants policy and the decentralisation of the administration of 0.7% income tax.
  - The large number of appeals and constitutional conflicts that the Government of Catalonia has been obliged to present in order to defend the Constitution itself and the framework of allocation of powers that derives from it.
  - The implementation of State-level legislation that obstructs the ordinary activities of the different departments of the Catalan Government, and affects the costs of the administration.
  - The launching of a whole battery of blatantly re-centralising legislative measures and of an administrative reform that, under the pretext of efficiency, seeks to attribute to the State powers or functions that are reserved for the Generalitat.
- 3) The third area of analysis quantifies the State's debt to Catalonia and shows the arbitrary nature and inequality of the current system of financing. A situation which, added to the persistent fiscal deficit, causes great difficulty for the financing of the Generalitat. It may be summarised as follows:
- Current non-compliance by the central government amounts to 9,375.7 million euros.
  - The current financing model does not respect the principle of ordinality and positions Catalonia below the average in per capita resources. Instead of being third in terms of fiscal capacity, it is tenth in terms of per capita resources.
  - The disloyalty of the Central Government has also been manifested in the unjust assignment of deficit objectives. This assignment penalises the local and autonomous administrations, the main providers of services to the public and guarantors of the model of the welfare state.

## 1- Language, education, culture, social protection and democratic values

### a) Language:

The constant snubs and attacks on the Catalan language are manifested in several ways:

- The use of Catalan at the European institutions. After a negotiating process between the twenty-five members states, on 13 June 2005 the Council of Ministers of the European Union approved conclusions that allow the possibility of limited official use, in the Community institutions and organs, of languages that do not have the status of official and working languages of the European institutions. In 2012 there were still difficulties in the way of the implementation of the administrative agreements so far reached between the State government and the different bodies that ought to allow, in general, the publication in Catalan of the acts adopted through co-decision of the European Parliament and the Council, the oral contributions in the sessions of the Council, and, where appropriate, the different institutions and organs of the Union and, finally, written communication between Spanish citizens who so desire and the organs and institutions of the Union.

The agreements are:

- Administrative Agreement between the Kingdom of Spain and the Council of the European Union, signed 7 November 2005.
- Administrative Agreement between the Kingdom of Spain and the Committee of the Regions, signed 16 November 2005.
- Administrative Agreement between the Kingdom of Spain and the European Commission, signed 21 December 2005.
- Administrative Agreement between the Kingdom of Spain and the European Economic and Social Committee, signed 7 June 2006.
- Administrative Agreement between the Kingdom of Spain and the European Ombudsman, signed 30 November 2006.
- Administrative Agreement between the Kingdom of Spain and the Court of Justice of the European Communities, signed 27 April 2009.
- Ongoing legal actions that seek to undermine the body of legislation regarding the Catalan language in order to diminish its effectiveness:
  - 5 laws challenged for linguistic reasons, cases that are still open (Occitan, education, retail trade, cinema and reception).

- 8 decisions (2012).

- In favour: 2 (on the transmission of TV3 in Valencian territory)

- Against: 6

- Restraining order and annulment of the Regulations for the Preferential Use of the Catalan Language in the Barcelona City Council (2)

- Against Catalan as the vehicular language and language of reception in the second cycle of infant education

- Knowledge of the official languages in the administration of justice and as a requisite to become a judge (2)

- Knowledge of Catalan in selective examinations for local civil servants

- State Fund for the Promotion of Films in Catalan: Article 36 of Law 55/2007, concerning cinema, states that with the aim of promoting and protecting the use of co-official languages other than Castilian in cinema and the audiovisual media a grants fund or specific credits will be created that will be transferred in their entirety to the relevant organs of the Autonomous Communities. According to the law, the funding each Autonomous Community with a co-official language is to receive will be equivalent per annum to the sum of what that Community has devoted in the previous financial year to the support and promotion of the production, distribution, exhibition and promotion of the audiovisual media in a co-official language other than Castilian. The machinery described in the law was put into operation in 2008 and the transfers from the central government's Ministry of Culture to the Generalitat's Department of Culture in this respect over this period has been as follows:

Justification to the Ministry of the investment in a Catalan original version by the Department of Culture		Grant awarded to the Department of Culture by the Ministry corresponding to the investment made in an original Catalan version	
2007	5,915,490.23	2008	1,524,750.00
2008	10,364,888.69	2009	6,911,829.21
2009	11,796,414.45	2010	4,802,751.31
2010	12,201,747.69	2011	4,707,100.00
2011	10,215,448.15	2012	0.00



## **b) Education**

The approval of the Organic Law for the Improvement of the Quality of Education (LOMCE), drawn up by the Ministry of Education, Culture and Sport, is a flagrant invasion of powers for education and seeks to dismantle the system of linguistic immersion that has been employed in Catalonia.

With regard to this law, the Catalan Schools Council declared that *“it is legislation that undermines Catalan language and culture in education and makes it impossible to maintain inclusive schooling and the system of linguistic immersion, as a result of segregating students on the basis of language. The ministerial proposal, in short, is inconsistent with education in Catalonia, is incompatible with the existing statutory model, reveals an interventionist desire to substantially alter the education system and obstructs the capacity of education to best satisfy the expectations of school students in Catalonia for their future”*. (Statement by the Schools Council of Catalonia in defence of the Catalan model of linguistic immersion approved in plenary session on 12 December 2012 at the Palau de la Generalitat.)

Main areas of conflict caused by the approval of the LOMCE:

1. The new regulation of the use of languages is frontally opposed to the linguistic regime of the educational system in Catalonia, according to the provisions of the Catalan Law of Education and the Statute of Autonomy. Our model coincides in large measure with the one established in its day by Law 7/1983, concerning linguistic normalisation in Catalonia, and fulfils the legal mandate to ensure full mastery of the official languages, Castilian and Catalan, by the end of the period of compulsory education, in accordance with the common European frame of reference for the learning, teaching and assessment of languages.

This opposition is such that, contrary to the opinion of the Council of State (Resolution 172/2013, of 18 April), it is explicitly provided that, if the Generalitat does not guarantee a reasonable educational provision financed from public funds in which Castilian is used as the vehicular language, parents may enrol their children in a private centre where teaching in Castilian is available and the Ministry of Education, Culture and Sport will fully fund these educational costs, which it will deduct from future transfers to the Generalitat.

Even though the original article regulating the use of languages was designed basically for Catalonia, during its passage through parliament an amendment was accepted which had been presented by the group Unión, Progreso y Democracia, which has no parliamentary representation in Catalonia, to add the following to this wording: *“El castellano es lengua vehicular de la enseñanza en todo el Estado y las lenguas cooficiales lo serán también en las respectivas comunidades autónomas, de acuerdo con sus estatutos”* [Castilian is the vehicular language of education

throughout the State, as are the co-official languages within their respective Autonomous Communities in accordance with their Statutes].

2. At every level of education, the new structure imposed by the LOMCE, in contravention of the Constitution and the Statute of Autonomy, places the Castilian language at a different level, where it is considered a fundamental subject (like mathematics, the first foreign language and physics and chemistry), while the Catalan language is considered to be an option adopted at the Autonomous Community level (like physical education, religion or ethics).
3. The LOMCE introduces profound changes in the model for the distribution of powers and responsibilities in education between the State and the Autonomous Communities that has been developed over a period of thirty years, changes which involve a recentralisation that is contrary to the letter and spirit of the Constitution. There has been an extension of the areas in which the State reserves for itself the power to decide the basic regulations and their scope (as in the case of dual vocational training and the definition of the curriculum), in such a way that the Autonomous Communities' powers for development and implementation are severely reduced.

The change in the educational system reduces the responsibilities of the Autonomous Communities to residual matters, very much inferior to those that had been recognised by the Statute of Autonomy and previous Organic Laws on education, from the LOECE (1980), the LODE (1985), the LOGSE (1990), the LOPAGCD (1995) and the LOE (2006).

4. The general evaluation of the education system becomes the exclusive province of the State. The Ministry of Education, Culture and Sport decides the nature of testing, the design of the examinations and their content, while all that remains for the Autonomous Communities is the physical administration of the examinations, contrary to what is laid down by constitutional doctrine, which holds that the unity and homogeneity of the test does not under any circumstances imply that the content of the examinations set for students must be absolutely identical.

### c) Culture

Article 127 of the Statute of Autonomy of Catalonia grants Catalonia exclusive powers in the field of culture. Time and again, the Government of Catalonia has asserted the need to abolish a ministry that serves no purpose. This position has been supported by the European Parliament in a resolution passed by a show of hands on 15.1.2013, which urged European governments to clarify responsibilities between different levels of the administration to avoid duplication and ensure the provision of the necessary funds for the different lines of policy.

Aside from this, we can count a number of actions by the State that have clearly harmed culture in Catalonia:

- The last four State budgets have consolidated a tendency to an overall decrease of 46.4% in contributions to major cultural facilities in Catalonia.

Facilities					Differential
	2011	2012	2013	2014	2011-2014
<b>MACBA</b>	1,950,000	1,640,000	1,036,000	992,490	<b>-49.10%</b>
<b>MNAC</b>	4,080,000	3,196,750	2,017,890	1,933,140	<b>-52.62%</b>
<b>Joan Miró</b>	190,000	161,500	80,000	78,010	<b>-58.94%</b>
<b>Mercat de les Flors</b>	968,000	726,000	363,000	341,220	<b>-64.75%</b>
<b>Palau de la Música</b>	476,280	381,020	190,510	179,080	<b>-62.40%</b>
<b>Liceu</b>	11,968,200	10,240,470	6,870,640	6,870,640	<b>-42.59%</b>
<b>Lliure</b>	870,000	790,000	592,500	592,500	<b>-31.90%</b>
<b>Tàpies</b>	90,000	76,500	49,730	48,740	<b>-45.84%</b>
<b>Total</b>	<b>20,592,480</b>	<b>17,212,240</b>	<b>11,200,270</b>	<b>11,035,820</b>	<b>-46.41%</b>

It must also be borne in mind that the amount that figured in the State budget for the MACBA for 2012 has still not been paid.

- Catalonia has clearly been worse affected than Madrid by the reduction of expenditure on culture in the State budget.

Community	2011	% of total	2014	% of total	Variation 2011-2014 %
Madrid	196,985.17	35.9%	102,862.50	42.8%	-47.8%
Catalonia	62,298.46	11.4%	15,429.25	6.4%	-75.2%

- Up till 2013, the budget of the Ministry of Culture included a series of direct grants to cultural events that have long been held in Catalonia, including summer arts festivals and business fairs in the culture industry. This support has almost entirely disappeared.
- With the cancellation of the former support for Barcelona's status as a capital, the unfairness of the treatment of Barcelona and Madrid became worse. As part of the

Charter of Barcelona, a segment of the budget was to be set aside to strengthen Barcelona as a cultural capital. Over the last three years, this has been reduced to the point of disappearance.

- The treatment received by Barcelona and Madrid in the State budget with regard to provisions for major cultural infrastructures demonstrates the State's unequivocal support for Madrid as the only cultural centre of the State of Spain, reducing the rest of the country to a cultural desert.

#### Comparative provisions for cultural facilities

	2011	2012	2013	2014
MACBA	1,950,000	1,665,000	1,036,000	992,490
MNAC	4,080,000	3,222,000	2,017,890	1,933,140
Museo del Prado	21,588,320	16,405,000	11,283,000	11,351,640
Reina Sofía	41,454,220	24,147,560	25,410,670	22,942,150

	2011	2012	2013	2014
Liceu	11,968,200	10,240,470	6,870,640	6,870,640
Teatro Real	15,471,000	13,150,350	8,775,170	8,775,170

- The State budget for 2014 consolidates rather than corrects the deprogramming of various investments by the State in Catalonia for the construction of major cultural facilities which, on some occasions, worsens historic deficits, and on others puts the conservation and exhibition of cultural assets at risk.

Suspension of major works: Barcelona Provincial Library, Provincial Archive of Girona and Tarragona National Archaeology Museum.

- Barcelona Provincial Library. Elimination of the annual payment for 2013 of 500,000 euros. Furthermore, the completion of the project has been put back two years. A project started in 2006 has been suspended. Work is not

expected to start until 2016. Barcelona becomes the only province of the State of Spain without a provincial library.

- Girona Provincial Archive. Cancellation of the payment for 2013 of 100,000 euros. Delay to the long-awaited start of work to replace a building with serious structural deficiencies.
  - Disappearance of sums to be devoted to specific projects (bridge at Besalú, Igualada Cotton Mill , Landscape Museum).
- **“Salamanca papers”**: As of now a large part of the confiscated documentation is yet to be returned, even though more than 30 years have gone by since the first requests for the return of the documentation that was removed from Catalonia during the Civil War and more than seven years since the approval of Law 21/2005, of 17 November, concerning the return to the Generalitat de Catalunya of documents confiscated as a result of the Civil War.

#### **d) Social protection**

The prolongation of an act of disloyalty by the State implies a direct infringement of the constitutional principle of the equality of all citizens. From this point of view and with respect to social protection it is alarming to observe the following:

1.- The repeated non-compliance by the State with the many decisions—of the Constitutional Tribunal and the chambers of the Supreme Court and the National Court (Audiència Nacional) that deal with administrative disputes, (in terms that will be detailed below)—that recognise and declare powers and responsibility of the Generalitat de Catalunya for activities to promote social services, the family, voluntary work, youth, gender policies and the integration of immigrants.

In spite of this reiterated jurisprudence, the State continues to perform these promotional actions by regulating and announcing on a centralised basis the grants for programmes of cooperation and voluntary work funded from an assignment of income tax, and in general regarding social services and equality, the integration of immigrants and gender policy.

2.- Non-fulfilment by the State when it ignores the powers of the Generalitat de Catalunya in relation to immigration. The action for unconstitutionality brought by the office of the Obudsman in relation to article 9 paragraphs 2, 4 and 5 of Law 10/2010, of 7 May, concerning the reception of immigrants and returnees to Catalonia, is viewed with great concern, since this precept as a whole ensures that this group of people will learn both Catalan and Castilian.

Similarly, the Directorate General of Registries excludes the *informe d'arrelament* [settlement statement] issued by the Generalitat to accredit this status in applications to acquire Spanish nationality through residence.

3.- Dependence and the promotion of personal autonomy. State-level legislation, with Law 39/2006, of 14 December, concerning the promotion of personal autonomy and attention to dependent persons, invades the exclusive responsibilities of the Generalitat de Catalunya in the field of social services. A law which, furthermore, has been insufficiently funded since it was passed, a situation which, with time, has been worsened by the ever more unequal sharing of financing and with more charges for Catalonia (the current contributions of the Government of Catalonia represent 80% of the total finance). The law approving the 2012 State budget unilaterally suspended the agreed level of financing of the System for Personal Autonomy and Attention to Dependence, with financing reduced by more than 48 million euros, obliging the Government of Catalonia to bring an appeal for unconstitutionality.

The Territorial Council of the System for Personal Autonomy and Attention to Dependence, which should be a forum to debate and agree the aims and resources for the implementation of services and support administered through this service, has become an organ of coordination and not of cooperation, with the State in a position of supremacy, ceasing to be the organ for interinstitutional cooperation that was brought into existence by Law 39/2006.

Furthermore, it can be observed that over the last three years there have been significantly fewer meetings of the Council.

4.- Reduction of the amount of financing by the State to contribute to the administrative costs arising from the management of non-contributive Social Security pensions, which is the responsibility of the Generalitat de Catalunya. In recent years it has been reduced by more than 64%.

5.- The new strategy for the eradication of violence against women 2013-2016 that was approved by the Council of Ministers on 26 July 2013 with the intention that it would form the backbone of actions by the public authorities to end male violence, involves all levels of administration and public authorities and invades the attributions of the Generalitat. The last 25 years of the Government of Catalonia's women's policy has left us in a position in which the development, coordination and consolidation of policies to eradicate male violence is far superior to the proposed Spanish Strategy.

6.- Childhood and Adolescence Plan 2013-2016 approved by the Council of Ministers on 5 April 2013, although it is purely a policy statement and lacks regulatory force, nonetheless interferes with the exclusive powers of the Generalitat in the field of childhood and adolescence, in accordance with article 166 of the Statute of Autonomy of Catalonia. In this regard, the most worrying thing is that this Plan assigns budgetary provisions to the State for the implementation of childhood and adolescence policies, when these credits should be devoted to the Autonomous Communities which have been invested with exclusive powers in the area of childhood and adolescence.

7.- The document that has been drawn up by the Commission for the Reform of the Public Administrations of the State (CORA) on administrative reform, proposing the elimination of bodies that are duplicated by the State and the Autonomous Communities, in view of the fact that it is proposed that certain services or activities carried out by the Autonomous administration should be provided by a State-level organism, so that certain state organizations would assume functions formerly performed by Autonomic bodies, with the consequent abolition of the latter. It must be borne in mind that the proposed elimination affects organs responsible for functions that are the exclusive responsibility of the Generalitat de Catalunya. By way of example, we may cite the proposed abolition of the Generalitat's Public Observatory of Childhood Rights in order for its functions to be taken over by the (State's) Public Observatory of Childhood Rights.

8.- In the field of accessibility, it should be noted that under the provisions of article 149.1.1 of the Spanish Constitution, the State has approved over recent years more than ten basic legislative provisions that determine accessibility regulations for different situations (building regulations, town planning, services, public transport, etc.).

These State-level regulations have important consequences for the powers which the Generalitat de Catalunya has been attributed under the Statute of Autonomy on matters directly related to accessibility (social services, housing, transport infrastructures and communications, public works, area planning, public transport, etc.).

Furthermore, they imply major changes in accessibility features implemented in Catalonia progressively over the last 25 years and will have a substantial impact on spending, difficult to assume under the established terms and within the timescale required. The situation is worsened by the fact that none of these regulations has been accompanied by budgetary provision nor has any programme been approved that would support their implementation.

9.- In the field of international adoption, Law 54/2007, of 28 December, has become a State tool to control the decisions of the Autonomous Communities in this regard.

Under the terms of this law, particularly Article 4, decisions by public authorities on aspects such as adoption procedures in different countries, assessment of opening into new countries and the choice of the procedural route to be followed for adoptions, are conditioned by prior assessment by the body for the coordination of the public administrations with regard to international adoption formed by officials of the Directorate General for Childhood and Family Services, pertaining to the Ministry of Health, Social Affairs and Equality.

In this regard, the latest agreements between Autonomous Communities have revealed a tendency on the part of the Ministry not to allow the Autonomous Communities to administer adoption procedures with different countries on the basis of their own assessment and in the exercise of their own powers, as well as to limit the opening up of new countries of origin, the number of accredited adoption organisations and the adoption procedures themselves.



## **e) Democratic values**

### Decision by the Constitutional Tribunal against the Statute of Catalonia

In large measure, the current situation being experienced by Catalonia has arisen because of the breaking of the rules of the game and political agreements between parties, brought about by the decision of the Constitutional Tribunal against the Statute of Catalonia.

A process that, having been approved by the Parliament of Catalonia and the Spanish legislature, and having been validated in a referendum by the people of Catalonia, has been invalidated by the Constitutional Tribunal. A decision that means the breaking of the rules of the game, which until that moment had been to find how Catalonia should fit into the State of Spain. A decision which, in short, infringed the principles of democracy because it imposed itself on what had been decided at the ballot-box and what the people of Catalonia had decided in a referendum.

To assess the Decision of the Constitutional Tribunal, president Montilla ordered a report by a group of experts on the “Decision of the Constitutional Tribunal that resolves the action for unconstitutionality presented by 50 deputies and senators of the People’s Party against the Statute of Autonomy of Catalonia”. This report came to the following conclusions:

1. The decision significantly weakens the constitutional function of the Statute of Autonomy and replaces its role in the constitutional corpus by that of the Tribunal itself.
2. The decision frequently treats the Statute as though it were merely an Autonomous Community law, through which one Community is seeking to impose obligations and mandates on the State, and forgets that it is a State-level law which is the outcome of a political pact between the Generalitat and the State.
3. The decision does not apply the [Tribunal’s] reiterated doctrine on the principle of deference towards the legislator which, in this case, ought to have been applied with particular sensitivity in view of the constitutional function of the Statute and of the heightened legitimacy endowed on it by the procedure of drafting and approval. Quite the contrary: the decision is impregnated with unjustified prejudice regarding the content of the Statute of Autonomy.

### Non-acceptance of the proposed Fiscal Pact agreed with the Parliament of Catalonia

Prime Minister Rajoy refused any negotiation of the proposed Fiscal Pact approved by almost two thirds of the Parliament of Catalonia. This became clear on 20 September 2012 at a meeting between the President of the Generalitat and the Spanish Prime Minister, who made it clear he was definitively not prepared to open any sort of negotiation.

The self-financing model for Catalonia would have included the administration of all taxes, full powers for the Catalan Taxation Agency, total legislative capacity of the Generalitat over all taxes, a contribution agreed with the State for the services which it provided in Catalonia and

another contribution as a measure of solidarity with other territories, while respecting the principle of ordinality.

### Declaration of sovereignty

On 8 May 2013 the Constitutional Tribunal agreed to consider an appeal by the Government of the State of Spain against the Declaration of Sovereignty approved by the Catalan Parliament on 23 January. For the first time since 1978, the Constitutional Tribunal has suspended a resolution by the government of an Autonomous Community. However, it has not been made clear what the practical effect of this suspension is, nor the direct consequences of a hypothetical illegalisation, since it is merely an institutional resolution without legal force.

The State Government appealed against the Declaration (that asserted that Catalonia was a sovereign political and juridical subject) to the Constitutional Tribunal despite the fact that the Parliament's text was a political resolution without juridical effect.

Before deciding to accept the appeal for consideration, the Constitutional Tribunal asked the Catalan Parliament which of the two declarations in favour of the right to decide that had been approved was the one that was then in force: the Declaration of Sovereignty—the one which was the subject of the appeal—or the one approved on 13 March, which merely called on the Catalan Government to open negotiations with the State with a view to putting the right to decide into effect, without mentioning sovereignty. The reply from the President [speaker] of the Parliament—as agreed by its legal services—was that both of them were valid, without being mutually contradictory.

Initially, the State Government had said that the Declaration in question had no legal effect and hence that it would not make sense to appeal against it. But later it requested a report from its legal services that determined that there were grounds for appeal. Also, there was a resolution by the Council of State that took the same view, in spite of there being some dissenting votes. The Council of Ministers took the definitive decision to appeal on 1 March 2013, calling for suspension of the Resolution.

### Challenge to the president of the Constitutional Tribunal

The Government of Catalonia agreed on 30 July 2013 to call for the disqualification of the president of the Constitutional Tribunal, Francisco Pérez de los Cobos, in the proceedings for the appeal on unconstitutionality and the conflict of powers to which the Government of Catalonia was then party and which were in the process of examination by this body.

The decision of the Executive Council after the Generalitat's legal office considered that the fact that the president of the Constitutional Tribunal had been a member of the People's Party amounted to an objective reason for a lack of impartiality and disinterest in cases affecting the Government of Catalonia in which the judge would be involved.

Subsequently, on 25 September 2013 a claim for disqualification was also lodged against the President of the Constitutional Tribunal in the appeal on unconstitutionality that it had agreed to present against several articles of Law 8/2013, of 26 June, concerning urban refurbishment, regeneration and renewal.

The Constitutional Tribunal dismissed the challenge presented by the Government of Catalonia by nine votes in favour, against two dissenting votes.

### Banalisation of totalitarianism and Nazism

After the demonstration on 11 September 2012, which filled the streets of Barcelona with 1.5 million people demanding that Catalonia become a new European state, and after the elections of 25 November the same year, that created a Catalan Parliament with an ample majority in favour of holding a plebiscite in which the Catalans could decide the political future of their country, accusations of totalitarianism against Catalan institutions and political parties and against Catalan society as a whole have become frequent.

This majority of society is falsely represented by certain politicians and communications media as being totalitarian or Nazi. These people barefacedly ignore the profoundly pacific, democratic and inclusive nature of this movement, far removed from any supremacism and concentrating on something as un-totalitarian as to call for the resolution of a conflict by means of the ballot box. This banalisation of the terms “totalitarianism” and “Nazism” has reached such absurd heights as to be uttered from the tribunes of the Catalan democratic institutions and media, particularly public broadcasters, to which, if their accusation had been true, they would certainly not have been given access under any circumstances.

The reiteration of these false accusations of totalitarianism can only have the aim of discrediting and delegitimising the Catalan political institutions, where the people of Catalonia have freely decided that those in favour of a referendum on the future of Catalonia are in a majority. The frivolisation of Nazism and of its consequences is unjust and an attack on democracy and the good name of those who support it.

It so happens, furthermore, that insofar as there were victims of Nazism in the Iberian Peninsula, most of them were Catalans. Catalonia itself may be counted as a victim. Supporting and sponsoring the rebellion of general Franco in 1936; cruelly bombarding Barcelona, Lleida, Granollers and many other Catalan cities and towns, which had become test beds for the bombardment of undefended civilian areas; handing over the president of Catalonia, Lluís Companys, to the Franco regime to be shot after a summary trial; imprisoning, mistreating, torturing many thousands of Catalans in Nazi extermination camps and working many to death. Never have Catalonia or its government been allied with Nazis; never has Catalanism had a totalitarian component nor has it defended dictatorship. If anything, Catalonia, the Catalans and Catalanism have been victims, like many other millions of Europeans, with whom those Catalan mingled their blood. Thus writes a Catalan, Joaquim

Amat-Piniella, whose centenary year this is, in what is considered to be one of the best literary works on the holocaust, *KL Reich*.

To turn the victim into an abuser and present a democratic majority as totalitarian is to descend to low tricks and foul play. This banalisation of totalitarianism has not met the hostility it ought to receive from the State Administration. The Generalitat de Catalunya has insistently called for reproof from the powers of the State of Spain, whether or not directly, within the framework of existing powers and responsibilities. It has also called for formal action by the CAC (broadcasting watchdog), insofar as they are audiovisual media that often host and amplify these banalising declarations. It should be noted that from the point of view of the Spanish government there have only been occasional condemnations, without decisive legal action. This fact contrasts with what has occurred in response to a resolution without legal effect which appeals—amongst others—to the principles of democracy and legality (Resolution 5/X on the Declaration of Sovereignty). The Spanish government has not acted even in the cases in which members or officers of political parties have directly compared the President of the Generalitat with Hitler, and the pro-sovereignty movement with Nazism. Neither have calls for violent solutions received an adequate response from the State, nor have the State authorities responded with sufficient forcefulness to events which are declaredly and explicitly totalitarian, such as the assault on the Generalitat de Catalunya's office in Madrid and the attacks on its occupants, on 11 September this year, whose perpetrators have received disproportionately small fines.

## **2- Non-fulfilment by the State and inter-institutional conflict**

Article 3.1 of the Statute of Autonomy of Catalunya, which is entitled “Political framework”, establishes that relations between the Generalitat and the State shall be founded on the principle of mutual institutional loyalty and shall be directed by the general principle that the Generalitat is State, by the principle of autonomy, by bilateralism and by multilateralism.

### **a) Bilateral relations**

The Government of the State has brought about paralysis in its bilateral relations with the Generalitat. The Generalitat-State Bilateral Commission—the permanent general framework for relations between the two governments that ought to meet at least twice a year—has not met since July 2011. In spite of reiterated proposals by the Generalitat, the State opposes any meeting of this organ to implement the provisions of the Statute that remain valid and would only agree to bring it together for the purpose of analysing future actions.

This situation also affects the other mixed commissions, such as the Security Board, the organ that should coordinate security policy in general and the activity of the respective police forces, which has not met since 2009. In the case of the Mixed Commission on Transfers, the body responsible for negotiating transfers of powers, the State has not renewed its representation, which is completely outdated, in spite of reminders from the Generalitat since 2010.

Furthermore, the Government of the State has manifestly failed to comply with the agreements adopted at the last meeting of the Bilateral Commission. Notably, the provisions of Additional Provision 3 of the Statute have not been liquidated and the agreement on the transfer of the large hospitals and other facilities that are owned by the Social Security but administered by the Generalitat has not been put into effect. A legal provision introduced into the Law on Social Security delayed it, but it was then annulled before it ever came into effect.

### **b) Transfers**

Since 2011 no transfer [of powers] has been made and nor have any been extended. This paralysis is mainly due to the following:

- the unfavourable political position adopted by the Government of the People’s Party with respect to self-government (a position that has led to an increase in conflicts over powers and responsibilities and to political and legislative actions that denote an unabashed desire to recentralise, and which hinders the negotiation of pending transfers to the extent of obstructing them completely).
- the doctrine established by the Constitutional Tribunal in its decision against the Statute of Autonomy of Catalonia (a doctrine that has weakened the statutory basis for some transfers)

- the current economic recession (a situation that makes it even more difficult to obtain a fair valuation of the functions and services to be transferred and has obliged the Government of Catalonia not to accept any transfers for which there is not an adequate financial provision).

- Halted transfers for which a technical committee has been formed

State and Generalitat formally agreed to establish technical committees to study and negotiate several pending transfers, a step that implies the initiation of talks, but the Government of the State has refused to begin negotiations. This affects the following matters, all of which are provisions of the Statute [of Autonomy]:

1. Ownership of the premises of the General Treasury of the Social Security attached to the Generalitat.
2. Execution of labour law in the fields of work, employment and vocational training; health insurance for industrial accidents and work-related disease.
3. Specialised medical training.
4. Authorisation of pharmaceutical laboratories and manufacturers of health products and cosmetics.
5. Sea rescue.
6. Private security.
7. Functions concerning leisure ports (marinas) and fishing ports located within ports that pertain to the State.
8. Ownership of the Palau del Lloctinent [a historic building in Barcelona].
9. Premises of the Barcelona Civil Registry and the National Institute of Toxicology.

It must be observed at the outset that at the meeting of the Bilateral Commission on 19.7.2011, the last to be held, the negotiations regarding two transfers that have also been blocked had reached a very advanced stage:

1. Financial/administrative demands (functions concerning credit entities, credit cooperatives, managers of pension funds and physical and legal entities in the insurance market).
2. Grants and assistance for university and non-university education.

It should be mentioned that these transfers have pending negotiations open since 2004, with decisions of the Constitutional Tribunal favourable to the Generalitat (in the case of the grants, for example, the transfer process has been open since 1994).

- Pending transfers

Transferable facilities or functions pending implementation are:

1. Barcelona Provincial Historic Archive.
2. Collections pertaining to Catalonia located within the Archive of the Crown of Aragon and the Royal Archive of Barcelona.
3. Historic bibliographic collections in the provincial libraries.
4. Tarragona Archaeological Museum.
5. Human and material resources for the exercise of functions related to stock-market services.
6. Functions and services related to economico-administrative bodies for the revision of taxes ceded in their entirety to the Generalitat.
7. Assessment of the quality of universities.
8. Functions and services related to the appointment of court solicitors who take possession in Catalonia.
9. Extension of human and material resources related to justice.
10. Authorisation for the transport of wastes from other countries that are not part of the European Union.
11. Auxiliary services at the ports and the administration of public areas within port facilities.
12. Inspection of vessels and marine safety.
13. Protection of personal data.
14. Public safety.
15. Organisation and administration of the assets that conform the health care system and the social services of the Social Security.
16. Functions and services of the Social Security.

17. Health insurance for work accidents and work-related disease.
18. Functions of the Navy Social Institute that have not been transferred.
19. Inscription of companies, affiliation and registration/deregistration in the Social Security as well as powers for inspection and penalties in these matters.
20. National Centre for Working Conditions in Barcelona.
21. Untransferred functions in the field of work and employment.
22. Management of the Salary Guarantee Fund (FOGASA).
23. Functions of the Administrative Unit of the European Social Fund.

Annex:

Table of transfers to Autonomous Communities and extensions of transferred powers approved in the 10th State parliament

**ACUERDOS DE TRASPASO A COMUNIDADES AUTÓNOMAS Y CIUDADES CON ESTATUTO DE AUTONOMÍA  
APROBADOS Y COMISIONES MIXTAS CELEBRADAS EN LA X LEGISLATURA**

SITUACIÓN A : 18 de junio de 2013

COMUNIDAD AUTÓNOMA/CIUDAD	NÚMERO DE ACUERDOS APROBADOS			NÚMERO DE COMISIONES MIXTAS CELEBRADAS		
	En Comisión Mixta	Por Apoderamiento	Total	2012	2013	Total
COMUNIDAD AUTÓNOMA DE ANDALUCÍA			0			0
COMUNIDAD AUTÓNOMA DE CANARIAS	2		2		1	1
GENERALITAT DE CATALUÑA			0			0
COMUNIDAD AUTÓNOMA DE GALICIA			0			0
COMUNIDAD FORAL DE NAVARRA			0			0
COMUNIDAD AUTÓNOMA DEL PAÍS VASCO			0			0
COMUNITAT VALENCIANA			0			0
COMUNIDAD AUTÓNOMA DE ARAGÓN			0			0
PRINCIPADO ASTURIAS			0			0
COMUNIDAD AUTÓNOMA DE LAS ILLES BALEARS			0			0
COMUNIDAD AUTÓNOMA DE CANTABRIA			0			0
COMUNIDAD DE CASTILLA Y LEÓN			0			0
COMUNIDAD AUTÓNOMA DE CASTILLA-LA MANCHA			0			0
COMUNIDAD AUTÓNOMA DE EXTREMADURA			0			0
COMUNIDAD DE MADRID			0			0
COMUNIDAD AUTÓNOMA DE LA REGIÓN DE MURCIA			0			0
COMUNIDAD AUTÓNOMA DE RIOJA (LA)			0			0
<b>TOTAL</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>1</b>
CIUDAD DE CEUTA			0			0
CIUDAD DE MELILLA			0			0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Source: Ministry of Finance and the Public Administrations. Latest update by the Secretary of State for the Public Administrations



### **c) Participation in State decision-making bodies and processes**

The Statute of Autonomy provided that the Generalitat should designate, or participate in the process of designation of, the members of several State organs, ranging from the Constitutional Tribunal, the General Council of the Judiciary, the Court of Auditors, the Revenue Agency (Agencia Tributaria), the Spanish Agency for Data Protection, the Broadcasting Council and the Paradores de Turismo (State-administered hotels), to the members of the management bodies of institutions such as the Bank of Spain, the National Stock Market Commission and the Telecommunications Market Commission, or of any organism that might replace them.

The Constitutional Tribunal, in its decision 31/2010, configured this participation as simply potestative, that is to say, as an option in the hands of the State institutions.

But the lack of will to implement the Statute, even where it is possible to do so, has also obstructed the configuration of this mechanism for the participation of the Generalitat in State bodies, a mechanism that would have led to closer links and stimulated institutional dialogue and cooperation.

### **d) Status of inter-institutional conflict**

This section reviews the conflicts over powers and responsibilities that have arisen between the Government of Catalonia and the Government of the State of Spain from the ruling against the Statute delivered on 28 June 2010 until the end of September 2013.

The conflicts over powers and responsibilities between the Government of the State of Spain and the Generalitat de Catalunya take the shape, in the case of norms with the status of law, of appeals for unconstitutionality brought before the Constitutional Tribunal, and positive conflicts over powers, in the case of regulations and administrative rules.

These proceedings over conflicts do not account for all the proceedings before the Constitutional Tribunal involving the Government of Catalonia, but they do make up a group which is particularly significant for self-government in Catalonia.

On 29 June 2010, the day after the Constitutional Tribunal delivered its ruling 31/2010, the ruling that resolved the action brought by deputies belonging to the People's Party parliamentary group in Congress against the Statute of Autonomy, the Government of Catalonia was a party in 75 of these proceedings pending resolution by the Constitutional Tribunal.

Subsequent to the delivery of this ruling, the Government of Catalonia has brought 34 more appeal proceedings or proceedings over conflicts of powers.

Out of the total, the Constitutional Tribunal has resolved 60, with the following results:

**26** rulings in favour.

**11** rulings partly in favour.

**3** rulings partially in favour.

**16** rulings against.

**4** interlocutories declaring the disappearance of the object of the action.

Still pending resolution are **38** actions for unconstitutionality and conflicts over powers brought by the Generalitat and **10** brought by the State.

Details of the 34 appeal proceedings and proceedings over conflicts of powers that have been brought since ruling 31/2010, of 28 June, in the 9th and 10th legislatures.

- 13 actions for unconstitutionality that the Generalitat has brought against the State.
  - 13 conflicts over powers that the Generalitat has brought against the State.
  - 8 actions for unconstitutionality that the State has brought against the Generalitat.
- Generalitat/State 13 actions for unconstitutionality:
1. Law 40/2010, of 29 December, concerning the geological storage of carbon dioxide.
  2. Law 2/2011, of 4 March, concerning the Sustainable Economy.
  3. Royal Decree/Law 8/2011, of 1 July, concerning measures to support mortgage debtors, for the control of public spending and the cancellation of debts with companies and freelancers contracted by local authorities, for the promotion of business activity and rehabilitation and for the simplification of administration.
  4. Royal Decree/Law 14/2012, of 20 April, concerning urgent measures to rationalise public spending on education.
  5. Royal Decree/Law 16/2012, of 20 April, concerning urgent measures to ensure the sustainability of the National Health System and improve the quality and safety of its services.
  6. Law 2/2012, of 29 June, concerning the General State Budget for the year 2012.
  7. Royal Decree/Law 20/2012, of 13 July, concerning measures to ensure budgetary stability and the promotion of competitiveness.
  8. Law 10/2012, of 20 November, regulating certain charges in the Administration of Justice and the National Institute of Toxicology and Forensic Science.

9. Law 16/2012, of 27 December, adopting various taxation measures to consolidate the public finances and stimulate economic activity.
10. Law 17/2012, of 27 December, concerning the General State Budget for the year 2013.
11. Royal Decree-law 4/2013, of 22 February, concerning measures to support entrepreneurs and stimulate the growth of job creation.
12. Law 2/2013, of 29 May, concerning the protection and sustainable use of the sea-shore and the modification of Law 22/1988, of 28 July, concerning the Coast.
13. Law 8/2013, of 26 June, concerning urban refurbishment, regeneration and renewal.

- Generalitat/State – 13 positive conflicts over powers:

- Binational rescue plan for the Perthus tunnel on the Perpignan-Figueres High Speed Rail Line.
- Royal Decree 1715/2010, of 17 December, designating the National Accreditation Agency (ENAC) as the national accreditation agency in accordance with the provisions of Regulation (CE) 765/2008 of the European Parliament and the Council, of 9 July 2008, which lays down the requisites of accreditation and market surveillance regarding the marketing of products and annulling Regulation (CEE) 339/2003.
- Royal Decree 102/2011, of 28 January, concerning the improvement of the quality of air.
- Royal Decree 775/2011, of 3 June, approving the Regulations of Law 34/2006, of 30 October, concerning access to the professions of Advocate and Court Solicitor.
- Royal Decree 804/2011, of 10 June, regulating zootechnics and animal health and welfare in equine establishments and establishing an equine health plan.
- Royal Decree 1494/2011, of 24 October, regulating the Carbon Fund for a Sustainable Economy.
- Order SSI/1199/2012, of 4 June, establishing the regulatory basis of, and inviting applications for grants for, cooperation and social volunteer programmes funded from Income Tax.
- Order SSI/1209, of 4 June, establishing the regulatory basis of the award of grants under the general grants scheme of the Secretariat of State for Social Services and Equality.

- Resolution of 31 August 2012, by the Secretary of State for Culture, calling for applications for grants from Local Authorities for cultural activities that promote cultural communication, for the year 2012.
  - Royal Decree 1529/2012, of 8 November, to implement the contract for training and apprenticeship and establish the basis for dual professional training.
  - Royal Decree 189/2013, of 15 March, modifying Royal Decree 34/2008, of 18 January, regulating certificates of professionalism and the Royal Decrees that establish certificates of professionalism issued for its implementation.
  - Royal Decree 239/2013, of 5 April, establishing the rules for the application of Regulation (CE) 1221/2009 of the European Parliament and the Council, of 25 November 2009, regarding the voluntary participation of organisations in a Community system of environmental management and assessment (EMAS), and annulling Regulation (CE) 761/2001 and Decisions 2001/681/CE and 2006/193/CE of the Commission.
  - Resolution of 13 May 2013, of the Secretariat of State for Social Security, establishing the general Plan of preventive activities of the Social Security, to be applied for insurers for industrial accidents and work-related diseases by the Social Security for the planning of activities for the year 2013.
- State/Generalitat – 8 appeals for unconstitutionality:
1. Appeal for unconstitutionality 8912/2010, against certain articles of Law 4/2010, of 17 March, concerning referenda.
  2. Appeal for unconstitutionality 4460/2011, against certain articles of Law 35/2010, of 1 October, concerning Occitan and Aranese in Aran.
  3. Appeal for unconstitutionality 5491/2012, against article 114 of Law 9/2011, of 29 December, concerning the promotion of economic activity in Catalonia, which modifies paragraphs 3 and 4 of Article 9 of Decree/Law 1/2009, of 22 December, regarding the regulation of commercial facilities in Catalonia.
  4. Appeal for unconstitutionality 6777/2012, against articles 59 and 64.4 and section 7 Additional Provision 6 of Law 3/2012, of 22 February, concerning the modification of the consolidated text of the Law on Urbanism, approved by Legislative Decree 1/2010, of 3 August.

5. Appeal for unconstitutionality 6687/2012, against articles 7, 9 and 10 of Law 2/2012, of 22 February, concerning the modification of several laws affecting the audiovisual [industry].
6. Appeal for unconstitutionality 7208/2012, against articles 16 and 41 of Law 5/2012, of 20 March, concerning fiscal, financial and administrative measures and the creation of a tax on stays in tourist establishments (includes the establishment of a one euro per prescription surcharge).
7. Appeal for unconstitutionality 7279/2012, against Decree/Law 5/2012, of 18 December, concerning the tax on deposits in credit institutions.
8. Appeal for unconstitutionality 630/2013, against certain articles of Law 8/2004, of 23 December, concerning trading hours, in the wording given in Decree/Law 4/2012, of 30 October , concerning trading hours and certain promotional activities.

To these actions for unconstitutionality must be added the proceedings to challenge Autonomous Community decisions 1389/2013, called for by the State government in challenging Resolution 5/X of the Parliament of Catalonia, approving the Declaration of Sovereignty and the right of the people of Catalonia to decide. This challenge is very surprising if one bears in mind that Resolution 5/X has no regulatory content nor does it have direct legal force. This demonstrates the desire of the central government to place every possible obstacle in the way of the process which Catalonia is following in favour of the right to decide.

Additionally, there are other proceedings initiated by organs or individuals other than the Government of the State of Spain against laws passed by the Catalan Parliament and appeals lodged by the latter against State laws.

- Lodged by organs or individuals other than the Government of the State of Spain – 6 actions for unconstitutionality:
  1. Appeal for unconstitutionality 6352/2010, lodged by the State Ombudsman against certain articles of Law 10/2010, of 7 May, concerning the reception of immigrants and returnees to Catalonia.

2. Appeal for unconstitutionality 7418/2010, lodged by the State Ombudsman against article 128.1 of Law 22/2010, of 20 July, concerning the Consumers' Code of Catalonia.
  3. Appeal for unconstitutionality 7611/2010, lodged by more than fifty deputies of the People's Party parliamentary group against certain articles of Law 22/2010, of 20 July, concerning the Consumers' Code of Catalonia.
  4. Appeal for unconstitutionality 7454/2010, lodged by more than fifty deputies of the People's Party parliamentary group against certain articles of Law 20/2010, of 7 July, concerning cinema.
  5. Appeal for unconstitutionality 7722/2010, lodged by more than fifty deputies of the People's Party parliamentary group against article 1 of Law 28/2010, of 3 August, concerning the modification of Article 6 of the consolidated text of the law on the protection of animals, approved by Legislative Decree 2/2008.
- Brought by the Parliament of Catalonia against the State – 1 Appeal for unconstitutionality:

Appeal for unconstitutionality 1808/2013 against State Law 16/2012, of 27 December, adopting several tax measures intended to consolidate public finances and stimulate economic activity.

**e) List of recent Constitutional Tribunal decisions which the State has failed to observe**

We can highlight a series of recent decisions that have recognised the powers of the Generalitat to administer and award grants for assistance and social services with State budget funding.

For example, the following:

- Constitutional Tribunal Decision 70/2013 of 14 March, resolving the conflict posed by the Government of the Generalitat concerning Order SSI/1199/2012, of 4 June, establishing the regulatory bases and announcing the award of grants for the implementation of cooperation and voluntary social programmes funded from the assignment from Income Tax.
- Constitutional Tribunal Decision 52/2013, of 28 February, resolving the conflict posed by the Government of the Generalitat concerning Order SAS/1352/2009, of 26 May, establishing the regulatory bases and announcing the award of grants for the

implementation of cooperation and voluntary social programmes funded from the assignment from Income Tax.

- Constitutional Tribunal Decision 26/2013, of 31 January, resolving the conflict posed by the Government of the Generalitat concerning Order TIN/2158/2008, of 18 July, establishing the regulatory bases for the awarding of grants to local organisations for the implementation of innovative programmes for the integration of immigrants, and the Resolution of 11 August 2008, by the Directorate General for Immigrant Integration announcing the award of grants to municipalities, partnerships of municipalities and districts for the implementation of innovative programmes for the integration of immigrants.
- Constitutional Tribunal Decision 21/2013, of 31 January, resolving the conflict posed by the Government of the Generalitat concerning Order TAS/892/2006, of 23 March, establishing the regulatory bases and announcing the award of grants for the implementation of cooperation and voluntary social programmes funded from the assignment from Income Tax.
- Constitutional Tribunal Decision 243/2012, of 17 September, resolving the conflict posed by the Government of the Generalitat concerning Order SSI/1209/2012, of 4 June, establishing the regulatory bases for the awarding of grants subject to the general grants regime of the Secretariat of State for Social Services and Equality.
- Constitutional Tribunal Decision 227/2012, of 29 November, resolving the conflict posed by the Government of the Generalitat concerning Order TAS/3441/2005, of 2 November, establishing the regulatory bases and announcing, for 2005, the awarding of grants to municipalities and partnerships of municipalities for the implementation of innovative programmes for the integration of immigrants.
- Constitutional Tribunal Decision 226/2012, of 29 November, resolving the conflict posed by the Government of the Generalitat concerning Order TAS/1948/2005, of 8 June, establishing the regulatory bases and announcing, for 2005, the awarding of grants for the implementation of innovative projects in the Social Services.
- Constitutional Tribunal Decision 177/2012, of 15 October, resolving the conflict posed by the Government of the Generalitat concerning Order SAS/2080/2009, of 21 July, establishing the regulatory bases and announcing the award of grants subject to the general grants regime of the Secretariat General for Social Policy and Consumption.
- Constitutional Tribunal Decision 178/2011, of 8 November, resolving the conflict posed by the Government of the Generalitat concerning Order TAS/893/2005, of 17 March, establishing the regulatory bases for the awarding of grants subject to the general grants regime of the department for Social Services, Families and

Disablement, the Ministry of Employment and Social Security and the Institute for the Elderly and Social Services.

- Constitutional Tribunal Decision 154/2013, of 10 September 2013, resolving the conflict posed by the Government of the Generalitat concerning the Resolution of 14 July 2008, announcing public grants for the refurbishment of rental accommodation.

There are also other cases such as Decision 89/2012, of 7 May, resolving the conflict posed by the Government of the Generalitat concerning the Resolution of 13 March 2008 on the Instituto Nacional de las Artes Escénicas y de la Música (National Institute of Stage Arts and Music), announcing grants for 2008 as part of the new generation scenic spaces programme. Neither has this Decision, which recognised the powers of the Generalitat to administer and award grants in Catalonia, been observed because the State, despite the fact that it no longer offers this line of assistance, has reproduced it in part and has in part modified the regulation of the aim in such a way that it continues to fail to recognise the powers of the Generalitat. This has given rise to a new conflict posed by the Government of the Generalitat concerning the Resolution of 31 August 2012, of the Secretariat of State for Culture, announcing the award of grants to Local Corporations for cultural activities to encourage cultural communication for 2012, which has the same centralised administration and award criteria as awards from the Ministry.

The Constitutional Tribunal often takes years to pronounce its decisions and when it recognises the powers of the Generalitat it is often the case that the State's stipulations have ceased to have effect. This has even happened in some cases when the Constitutional Tribunal has pronounced within a relatively brief period of time. This is the case with Decision 150/2012, of 5 July which resolved an appeal in favour of the Government of the Generalitat a few years ago concerning Royal Decree Law 13/2009, of 26 October on the creation of the State Fund for Employment and Local Sustainability. Despite the court's finding in favour of the powers of the Generalitat, this decision has, at present, no practical application.

With regard to grants and funding of a general nature for mid-level and university studies, Constitutional Tribunal Decision 188/2001, of 20 December, resolving the conflict posed by the Government of the Generalitat concerning the Order of the Ministry of Education and Science of 15 June 1994, recognised the powers of the Generalitat for their administration and award. The State has modified the administrative model in part but has still not fully observed the delimitation of powers then established in the Constitutional Tribunal's ruling. In fact, the Generalitat later posed a conflict against Royal Decree 1721/2007, of 21 December, on the establishment of the regime for grants and funding for personalised studies, which is still pending the court's decision.

With regard to continuing education within the public Administration the Constitutional Tribunal pronounced its Decision 7/2013, of 17 January in which it upheld, in good measure,



the case made by the Government of the Generalitat against the Resolution of 17 October 2005, of the Secretariat General for the Public Administration, ordering the publication of the 4th Public Administration Continuing Education Agreement. At the present time the State has still not observed the decision despite the fact that there have been working meetings with the Ministry.

The Constitutional Tribunal Decision 245/2012 of 18 December resolved the conflict posed by the Government of the Generalitat concerning Law 39/2003, of 17 November on the Railway Industry and determined that the State could not integrate all the services provided by RENFE in its network and that consequently it would be necessary to redefine its railway network through the application of constitutional criteria relating to the rail services' supra-autonomous territorial sphere, public works general interest, and also by respecting statutory criteria in such a way that railway lines and services provided entirely within Catalonia correspond to the Generalitat. At the present time the State has still not redefined the railway network and services in accordance with the court's ruling.

The old court ruling from the 1990s on the "Plan Futuras" which obliged the State to territorialise the funds devoted to tourist funding for companies and institutions continues to be systematically ignored. Every year there are new announcements for applications for, and distribution of, funding in the field of tourism.

#### **f) Legislative and administrative recentralisation**

Over recent years the State has undertaken a series of legislative initiatives of a clearly recentralising nature with the aim of removing normative decision-making capacity and administrative faculties from the Autonomous Communities. In some cases agreements made with the Generalitat to introduce special provisions for Catalonia in accordance with the Generalitat's exclusive powers have not been respected.

We might, at the present time, highlight the following:

- Draft Law on environmental evaluation
- Draft Law on rationalisation and sustainability in Local Administration
- Draft Law on the guaranteeing of market unity
- Draft Organic Law on the creation of the Independent Fiscal Responsibility Authority
- Draft Law on the State's Foreign Service and Action
- Draft Organic Law on the improvement of educational quality

The State Government also pursues an administrative reform based on the so-called CORA Report with the aim of eliminating institutional duplication. In its view, the existence of such duplication is always the responsibility of the Autonomous Communities and it calls on them

to suppress bodies or to stop providing services so as to entrust everything to organs of the State.

It proposes, amongst other recentralising measures, to eliminate the Síndic de Greuges (Ombudsman), the Sindicatura de Comptes (Audit Tribunal of Catalonia), the Autoritat Catalana de Protecció de Dades (Catalan Data Protection Authority), the Tribunal Català de Defensa de la Competència (Catalan Tribunal for the Protection of Competition), the Agència d'Avaluació de la Qualitat Universitària - AQU (University Quality Evaluation Agency), Meteocat (the Catalan Meteorological Service), the Centre d'Estudis d'Opinió (Public Opinion Survey Centre) and the Institut Cartogràfic de Catalunya (Cartographic Institute of Catalonia).

The report does not observe the mechanisms contemplated in the Constitution for the correction of malfunctions in the distribution of powers (Article 150.2, Transfers), but rather introduces a new and undefined principle (one Administration, one power), contrary to constitutional provisions.

### **3- Quantification of central government non-fulfilment (disloyalty and others)**

The principle of institutional loyalty is established in the Statute of Autonomy of Catalonia, the Organic Law on the Financing of the Autonomous Communities (LOFCA) and Law 22/2009 regulating the financing of the Autonomous Communities , and is defined as:

“The determination of the positive or negative impact that general provisions approved by the State have on the Autonomous Communities, both in terms of income and in terms of new spending obligations”.

The aim of this section is to identify those State rules that impinge on the Generalitat's budget, that is to say, that have repercussions for either its income or its expenditure. The evaluation of the impact of the various rules and State actions should make it possible to define the mechanisms of necessary adjustment and compensation by the State.

#### **- The principle of institutional loyalty in the financing models of 2001 and 2009**

The financing agreement of 2001 introduced, for the first time, the concept of institutional loyalty understood as the determining of the positive or negative amount that the general provisions approved by the State might have on the budgets of the Autonomous Communities both with regard to income and to expenditure.

Since the establishment of the principle of institutional loyalty the Catalan Government Ministry of the Economy has worked to identify and evaluate the state rules that might impinge on the Generalitat's budget. In a study that included the years 2001 to 2005, the estimated cost of State measures for the Generalitat's finances was €1,084M per annum, and this is without taking into account such important items as the cost of dependence (at that time the Law on Dependence had still not been passed).

To summarise, it can be said that the cost of measures approved by the State to the Generalitat is equivalent to 5% of the consolidated budget for each financial year.

The State, in contrast, has only provided compensation for the elimination of the wealth tax and as far as the other measures are concerned, these have, according to the provisions of the financing law, been considered covered by the State from the additional resources contemplated in the financing model. Consequently, the amount of this greater expenditure continues to be assumed by the Generalitat.

The principle of institutional loyalty is also contemplated in the financing model of 2009.

- Estimated cost of institutional loyalty

When quantifying the cost of institutional loyalty measures prior to the new Autonomous Community financing model of 2009 must be borne in mind as well as the measures taken after this agreement came into force.

It should be remembered that between 2001 and 2009, according to the calculations of the Government of the Generalitat, the annual cost of institutional loyalty for Catalonia was equivalent to 5% of its consolidated budget which, for 2009 meant a total of €1,849M without taking into account the Law on Dependence.

Since 2009 the estimated annual cost of institutional loyalty, as defined in section 2, is approximately:

- Institutional loyalty in the field of health: €252.7 M
- Institutional loyalty in the field of finance: €90 M
- Institutional loyalty in the field of dependence: €235 M

**TOTAL 577.7 M€**

The cost of institutional loyalty for the Generalitat in 2012 was:

- 5% of €37,025M: €1,851.2M (consolidated budget)
- Added costs 2009: €577.7 M

**TOTAL: €2,428.9M**

Presented below is a first list of State rules and actions which the Generalitat de Catalunya considers should be analysed in terms of institutional loyalty. Also included are those actions which, despite the fact that they do not derive, properly speaking, from a State rule, are, nevertheless State decisions which have repercussions for the obligations of expenditure of the Generalitat and which therefore have a budgetary impact.

At the present time we can quantify the Central Government's non-fulfilment thus:

€5,748.0M	State debt in infrastructure investment (Amount accepted by the Ministry of Public Works and Transport as pending debt) (If this debt were paid it would cancel the Third Additional Provision debts of the Statute)
€672.6M	Reduction in dedicated revenue from the State (Comparative budget liquidation 2010 – budget liquidation 2012)
€1,715.2M	State measures entailing an increase in expenditure

€1,239.9M	State measures entailing a decrease in income
<b>€9,375.7M</b>	<b>TOTAL</b>

**a) State debt in infrastructure investment**

State debt in infrastructure investment amounts to €5,748M. This amount has been accepted by the Ministry of Public Works and Transport as pending debt and if it were paid it would mean the cancellation of the debts the State is accumulating in terms of the Third Additional Provision of the Statute of Autonomy of Catalonia.

**b) Reduction in dedicated revenue from the State**

Additional provision 41 of Law 39/2010, on the General State Budget for 2011 and additional provision 30 of Law 2/2012 on the General State Budget for 2012 made the signing of the agreements between the State public sector and the autonomous public sector conditional on the Autonomous Communities meeting the deficit targets. For the first time the General State Budget Law for 2013 also made all State public sector funding to the autonomous public sector conditional (in accordance with Article 20.3 of Organic Law 2/2012 on Budgetary Stability).

Specifically, under the provisions of the rules for budgetary stability, Law 17/2012 on the General State Budget for 2013 establishes that during 2013 the granting or modification of funding, or the subscription, prorogation, or modification of the agreements between the State public sector and the public sector of the Autonomous Communities that fail to meet their targets for budget stability, public debt or the regulations for expenditure for the 2011, 2012 and 2013 financial years, or that risk failing to do so, shall require, prior to their authorisation, a favourable, compulsory and binding report from the Ministry of Finance and Public Administration. Such reports shall be necessary whenever such funding or agreements:

- imply a transfer of resources from the State public sector to the Autonomous Community public sector

and/or

- imply an undertaking for expenditure by the Autonomous Community.

Between the liquidation for 2010 and the liquidation for 2012 the Generalitat de Catalunya saw a reduction in dedicated revenue from the State of €672.6M. The main reduction was focused on employment and training programmes for workers, with a reduction of €258M, followed by education and research programmes, €141.7M and support for dependence and social programmes, €121.8M.

c) **List of State rules and measures with an impact on the income or expenditure of the Generalitat**

What follows is a list, not a complete one, of the State rules and measures with an impact on the income or expenditure of the Generalitat:

- 1. Liquidation of the Third Additional Provision of the Statute of Autonomy of Catalonia.** The State's undertaking should be defined in relation to the liquidation of the Third Additional Provision of the Statute of Autonomy of Catalonia corresponding to 2008 (€759M) which should have been paid in 2011 and the amount agreed with respect to the liquidation for the 2009 and 2010 financial years (anticipated as €211 and €719M respectively) which should have been paid in 2012 and 2013. If the amounts for 2011 and 2012 are added, the total amount is €3,529M.
- 2. The deficit targets set by the Ministry of Finance for the Autonomous Communities** repeatedly fail to observe the Law of Budgetary Stability implying a greater effort by the Autonomous Communities. The Generalitat has presented the minister of Finance with an injunction against the deficit targets for the Autonomous Communities as a whole for the period 2013-2016. In the event of having these deficit targets the Generalitat would not have to make any extra effort to reduce expenditure or to obtain new income.

% GDP	2013	2014	2015	2016
Imposed targets	-1.3%	-1.0%	-0.7%	-0.2%
Law of Budgetary Stability targets	-2.5%	-2.2%	-1.6%	-1.1%

For 2014 this arbitrary decision means €2,400M will not be available.

- 3. Refusal (or greater difficulties) of the State government to renew agreements with the Generalitat** on account of the latter exceeding the deficit target. State rules stipulate that in the event of failure to meet the deficit and debt targets a prior report is required from the Ministry of Finance for the subscription of agreements with the State for the provision of funding.
- 4. Financing for outstanding scientific institutions.** Existing commitments regarding outstanding scientific and technical facilities (ICTS) and European infrastructures have not been met: the CBATEG Mouse Clinic consortium has not been created, neither has the Centre for Structural Biology and neither has a road map been drawn up for the prioritisation of European infrastructures.

5. Article 3 of Royal Decree Law 13/2010, of 3 December, **on actions in the liberalising, employment and fiscal fields to promote investment and create employment** increases the number of operations that are exempt from the tax on documented legal transactions, the founding of companies and capital increase. The loss in income to the Generalitat has been estimated at €90M.
6. While the economic impact of the Organic Law on the Improvement of Educational Quality (LOMCE) has yet to be evaluated in terms of institutional loyalty, the fifth additional provision of Organic Law 4/2011, of 11 March, complementing the Law of the Sustainable Economy which modifies, amongst others, Organic Law 5/2002 on **qualifications and vocational training**, establishes that centres maintained with public funds that provide vocational training and employment-oriented courses must submit all their educational activities for evaluation, it being understood, therefore, that a new activity has been generated for these educational centres to carry out.
7. **The financing in Catalonia of the activities carried out by the centres, services and specialised units (CSUR) of the State Health Service for Catalan patients.** Thus far only patients from other communities have been funded.
8. **Transfer to the Autonomous Communities of Social Security assets for the provision of health services.** If the Autonomous Communities had title to the assets they could use these assets to establish ways of financing the investments needed to maintain the infrastructures in correct condition and to improve the real image of the health accounts. Law 27/2011 on the updating, adaptation and modernisation of the Social Security system contemplated the finalisation of these transfers. However, with the Law on the General State Budget for 2013 the State derogated this provision thereby eliminating the possibility of finalising this transfer.
9. **Financing of the historic debt with the Social Security of State-assisted hospitals for debts prior to 1995.** Total amount: €472M.
10. **Organic Law 2/2010, of 2 March, on sexual and reproductive health and the voluntary interruption of pregnancy.** This law widens the criteria giving people the right to the voluntarily interruption of pregnancy. The data available at the moment show that, on one hand there has been a considerable increase in the number of abortions, and on the other hand, a large concentration of such operations within the public health system on account of the widening of the criteria facilitating funding for them from the public sector. The estimated additional cost of voluntary interruptions of pregnancies is €7.8M for 2011.
11. **Law 42/2012, of 30 December, modifying Law 28/2005, of 26 December, on health measures to be taken to confront tobacco addiction and to regulate the sale, supply, consumption and advertising of tobacco products** has led to a

modification in the catalogue of services entailing additional health costs of €13–16M for pharmaceutical products and psychological support.

- 12. The maintenance of cochlear implants.** Until the present time these were not included in the catalogue of services provided and they imply an additional cost of €0.5M.
- 13. Cost of the Oral Health Plan** that commenced in 2008 for children between the ages of 7 and 15. Until 2013 the State funded 50% of the children joining the programme each year. It is calculated that from 2013 the cost of this programme will be €4.6M.
- 14. Broadening of benefits in the field of health protection by the Public Health Committee** such as, for example, the introduction of new vaccines and anti-viral drugs at a cost of some €18M without the intervention of the Benefits Committee.
- 15. Invoicing the total cost of health-care services rendered to patients from other Autonomous Communities.** Compensation from the Health Cohesion Fund for 2012 was almost €11M, some €53M less than estimates of its real cost (in the region of €64M).
- 16. Recovery of the contribution to the pharmaceutical industry** which, in 2009 with the approval of Law 28/2009 was bracketed together with research and implies the loss of income of some €22.4M per annum.
- 17. Financing of the drug Dabigatran** for the prevention of strokes and systemic embolism (€66M).
- 18. Financing of the drug Boceprevir** to treat chronic hepatitis C infection (cost €35.5M).
- 19. Infrastructure debt to Catalonia €5,748M** (accepted by the minister of Public Works and Transport on 13/02/2012).
- 20. Local Rail Services Plan 2008-2015.** Very low level of implementation of the order of 9% of an initial forecast investment of €4,000M.
- 21. Protocol on the road network 2005-2012.** The Generalitat has implemented 70% of the investment (€3,500M) while the Ministry of Public Works and Transport has implemented only 28% of a total of €3,200M. It is considered necessary to prioritise the road access to the Port of Barcelona for trucks; the Fourth Ring-Road as far as Terrassa; the intersection of the A-2/AP-7 in Castellbisbal; the A-2 motorway in the districts of Girona; the A-27 motorway between Valls and Montblanc; and the Vallirana bypass of the N-340 highway (started in 2003), amongst others.
- 22. Financing of public transport.** The State's contribution has been reduced annually, and by 12% since 2010 with regard to the Barcelona Metropolitan Transport Authority



Consortium. The State does not participate in the financing of the transport consortiums of Girona, Tarragona or Lleida.

- 23. In the field of housing**, despite the evolution of the General State Budget with regard to grants for the purchase and refurbishment of housing, in which over recent years Catalonia has had a weight of around 15% with regard to the Autonomous Communities taken as a whole, by July 2013 there were grants pending payment to developers of social housing (186 developments) for a total of €98.47M.
- 24. Non-fulfilment of contributions to outstanding cultural centres** reducing the contribution by more than the average State reduction.
- 25. No financial participation of the AGE in the Institut Ramon Llull.** The State's contribution to the Instituto Cervantes is €110.46M through the Ministry of Foreign Affairs.
- 26. Territorialisation of European Union and State grants and funding.** The immediate transfer of funds has been requested since the aims are set by the European Union. At the present time ministerial approval of the rules and the setting of the limits of the funds are being awaited. An appeal of unconstitutionality has been lodged.
- 27. CAP negotiation 2013-2020.** It is sought to apply criteria that are prejudicial to Catalonia.
- 28. Fishing Industry Structural Funds Negotiation.** It is sought to apply criteria that do not take the coastal fleet into account.
- 29. Assignment from taxation of 0.7% of income tax in favour of organisations and projects of social interest.** Application of the ruling by the Supreme Court that found in favour of the appeal lodged by the Generalitat de Catalunya which will allow Catalonia to administer the funding for cooperation and voluntary social programmes deriving from personal income tax. According to the court's ruling it is within the State's power to regulate the central aspects of this funding, that is to say, the aims and end purpose of the funding, its technical form, the beneficiaries and the requisites for eligibility. But it is within the power of the Generalitat to administer it, that is to say, to process, determine and pay the funds and to regulate the corresponding procedures in all aspects.
- 30. Unaccompanied foreign minors.** Non-fulfilment of repatriation orders. Despite powers corresponding to the State, legal guardianship corresponds to the Generalitat de Catalunya. The failure to observe repatriation orders for these minors implies an important economic burden for the Catalan government ministry of Social Welfare and Family.
- 31. The financing the Law of Dependence** entails a non-fulfilment of the terms of the law itself which establishes that the State contribution should be equivalent to the

contribution by the Autonomous Communities. In fact, according to Generalitat data the financing for dependence in 2010 was distributed in the following manner:

- €689.77M Generalitat (61.46%)
- €334.97M State (29.85%)
- €97.56M Users (8.69%)

In 2011 this imbalance became even more accentuated on account of the reduction in the State's contribution:

- €906.86M Generalitat (70.43%)
- €258.44M State (20.07%)
- €122.24M Users (9.49%)

It is consequently the lower State contribution which obliges the Generalitat to make a greater effort, if that is possible. This extra effort, in 2011, was of €235M.

For 2012 the figures are as follows:

- €929.22M Generalitat (68.67%)
- €243.54M State (18.00%)
- €180.34M Users (13.33%)

**32. Special Employment Centres:** The funding policy, and consequently the quantities and methods for the Special Employment Centre funding programmes, are set by State rules, it falling to the Generalitat de Catalunya to implement them. Current rules set funding at 50% of the interprofessional minimum salary (SMI) for all persons with a disability. From July 2009 until December 2011, as an extraordinary measure, funding was set at 75% of SMI for people with especially difficult disabilities. The expenditure required for these active policies is €73.45M. The State only finances €44.28M (Sectorial Conference Agreement, July 2013), the remaining €27M has to be financed through the Generalitat's own resources.

This percentage of coverage, in the region of 40%, must be covered through the Generalitat's own resources every year.

In 2010 and 2011 the Generalitat's contribution was greater than 40%.

**33. Minimum income allowance:** The reduction made by the government with respect to coverage for the unemployed (both subsidies and benefits) has led to an exponential increase in the demand for the minimum income allowance. In fact there

is non-fulfilment regarding State powers concerning coverage for the unemployed and it leads to greater expenditure, within the Autonomous Community field of responsibility, concerning social services, without funding for the new demands produced by the change in the rules.

**34. Chambers of Commerce:** In July 2011, in response to the publication of Royal Decree Law 13/2010 of 3 December on actions in the fiscal, employment and liberalising field to promote investment and create employment, and also Law 2/2011, of 4 March on the sustainable economy, an appeal was lodged with the Ministry of Industry about the suppression of the Permanent Chamber Resource, or quota, which is the main source of income for the chambers of commerce. This has a direct impact on the services rendered to companies but it also has an impact on the Generalitat's finances.

The financial impact of the suppression of the Permanent Chamber Resource, or quota between 2011-2014 means the loss of €33.6M per annum for economic promotion (€84.672M from 2011 to 2014).

**35. Transfer to the Generalitat of the amounts corresponding to income from judicial deposit accounts** generated in its favour (Article 104.e of the Statute of Autonomy of Catalonia). (An appeal of unconstitutionality, number 870-2003, by the Government of the Generalitat against Article 70 of Law 53/2002, of 30 December on fiscal and administrative measures, and the order concerning the generation of credit by the Ministry of Justice deriving from income from judicial deposits and consignations is pending resolution. The appeal claims that interest deriving from the administration of judicial deposits and assignments should revert to the Treasury of the Generalitat.)

**36. The second additional provision of Organic Law 5/2010, of 22 June**, modifying Organic Law 10/1995, of 23 November, on the Penal Code, establishes that the Government, in collaboration with the Autonomous Communities with powers in the field, will set up an electronic registration system for infractions.

**37. Non-payment for the administration of student grants and funding.** By means of collaboration agreements, and while awaiting the corresponding transfer, the Generalitat has, since 2005, assumed the administration of the procedures for the awarding of grants and funding for university and non-university studies. In these agreements the State agreed to remit the costs of quantification and administration at the moment when the transfer was effected, something which has not yet happened. There is no agreement about the quantification of the cost of the administration assumed by the Generalitat thus far. Nevertheless, in the Agreement signed for the 2011-2012 academic year the estimated costs of administration were set at 1% of the total amount of the grants and funding awarded for this academic year, capped at a maximum of €1,410,877. This amount, which should have been satisfied before the

end of the 2012 financial year, has not been paid to the Generalitat and neither have the corresponding previous amounts.

The following is a summary of the situation as at September 2013

**Quantificació d'incompliments del Govern Central (deslleialtats i altres)**

M€

<b>Disposició addicional 3a i inversions</b>	<b>5.748,0</b>
Inversió compromesa i no realitzada Entre els quals l'incompliment DA 3a: 759 M€ (exerc 2008); 211 M€ (exerc 2009); 719 M€ (exerc 2010); 330 M€ (exerc 2011), 849 M€ (exerc 2012) i 661 (exerc. 2013).	5.748,0
<b>Reducció dels ingressos finalistes provinents de l'Estat en el període 2010-2012</b>	<b>672,6</b>
<i>Treball i Servicio Público de Empleo</i>	<i>258,0</i>
Promoció i altres programes d'ocupació	217,1
Formació contínua de treballadors	40,9
<i>Dependència i Polítiques Socials</i>	<i>121,8</i>
Promoció de l'autonomia personal i atenció a les persones en situació de dependència	79,4
Programes d'habitatge	18,0
Fons de suport a l'acollida i la integració d'immigrants i al reforç educatiu	15,6
Programes socials: Serveis socials corporacions locals	7,0
Altres	1,9
<i>Educació i Recerca</i>	<i>141,7</i>
Gratuïtat del segon cicle d'Educació Infantil	56,8
Programes d'educació	44,3
Beques no universitàries	22,4
Beques universitàries	10,5
Programes d'universitats i recerca	7,8
<i>Salut</i>	<i>24,6</i>
Hospital Clínic de Barcelona	13,3
Programes sanitaris	11,3
<i>Sectors Econòmics i infraestructures</i>	<i>90,9</i>
Programes d'agricultura, pesca i alimentació	63,2
Compensacions per descomptes en peatges	20,5
Programes de comerç, turisme, indústria, PIMES i energia	7,1
<i>Resta</i>	<i>35,6</i>
Programes mediambientals	17,1
Del Ministerio de Justicia per finançament de serveis traspassats	6,5
Altres	12,0
<b>Mesures estatals que suposen un increment de la despesa</b>	<b>1.715,2</b>
Increment de despesa derivat de l'augment del tipus de l'IVA (66M€ 2012 i 198M€ 2013)	264,0
Penalització pel retard del pagament a la Seguretat Social 2012	72,0
Despeses que abans es cobria amb ingressos finalistes provinents de l'Estat i a les que la Generalitat ha hagut de fer front durant 2012	248,7
Ampliació supòsits interrupció embaràs	7,8
Anticonceptius última generació	70,0
Prestacions de farmàcia i suport psicològic	16,0
Implants cloclears	0,5
Mesures preventives i assistencials dirigides als nens de 7 a 15 anys	4,6
Noves vacunes i medicaments antivirals	18,0
Finançament del medicament Dabigatran per a la prevenció de l'ictus i de l'embòlia sistèmica	66,0
Finançament del medicament Boceprevir per a la infecció crònica de l'hepatitis C	35,5
Pla Prepara	2,3
Desplegament de la Llei de la Dependència (import de la prestació per cuidadors no professionals no coberta amb recursos de l'Estat acumulat entre 2008 i 2013)	909,8
<b>Mesures estatals que suposen un decrement dels ingressos</b>	<b>1.239,9</b>
Impost dipòsits bancaris	866,0
Recurs d'inconstitucionalitat de la taxa farmacèutica (euro per recepta)	198,0
Recurs d'inconstitucionalitat de les taxes judicials	8,6
Compensació insuficient desplaçats	54,9
Vinculació de la aportació de la indústria farmacèutica a la investigació	22,4
Introducció noves exempcions en l'impost sobre operacions societàries	90,0
<b>Import total</b>	<b>9.375,7</b>

**Appendix 1. Liquidation of the financing model**

In accordance with data presented by the Ministry of Finance and Public Administration the **liquidation of the financing model for 2011** once again placed Catalonia below the average in terms of resources received.

In 2011 Catalonia **was the third largest Autonomous Community in terms of the contribution of tax resources** to the Autonomous Community financing system but **the tenth in resources per capita received** once the current redistribution model had been applied:

- In the payment of taxes Catalonia is 19 points above the average for common-regime Autonomous Communities while in the subsequent redistribution of resources it is six points below the average.
- Thus the tendency of 2010, when Catalonia also fell from third to tenth position, is confirmed. Catalonia was only placed above average the first year the model was applied.

**Resultat model de finançament 2011 (per càpita)**

Capacitat inicial			Índex	Recursos finals			Índex	
Madrid			134,2	1	Cantàbria		124,4	1
Balears			121,7	2	La Rioja		120,7	2
<b>Catalunya</b>			<b>119,1</b>	<b>3</b>	Aragó		116,3	3-4
Aragó			114,6	4	Castella i Lleó		116,3	3-4
Cantàbria			114,4	5	Extremadura		114,5	5
Astúries			106,6	6	Astúries		112,6	6
La Rioja			103,2	7	Galícia		110,9	7
Castella i Lleó			101,5	8	Castella-La Manxa		103,4	8
València			93,7	9	Balears		100,8	9
Galícia			91,2	10	<b>Catalunya</b>		<b>99,4</b>	<b>10</b>
Castella-La Manxa			85,4	11	Madrid		95,4	11
Múrcia			83,5	12	Andalusia		93,9	12
Andalusia			79,9	13	València		93,6	13
Extremadura			76,2	14	Múrcia		93,1	14
Canàries			42,2	15	Canàries		88,3	15
<b>Mitjana comú</b>	<b>CA</b>	<b>règim</b>	<b>100,0</b>		<b>Mitjana comú</b>	<b>CA</b>	<b>règim</b>	<b>100,0</b>

- In total, in 2011 Catalonia received **€16,912M, 3% less than the previous year.**

On the other hand, a general view of the evolution of all the Autonomous Communities makes it clear that:

- The redistribution mechanisms employed by the State lead to an arbitrary distribution of resources: while Catalonia drops seven places other communities with a much lower than average tax base have received more resources per capita than Catalonia.
- The evolution of the resources for each Autonomous Community bears no relation to the behaviour of its economy. Over the three years the model has been applied it can be seen that Catalonia, with GDP growth of 2.9% (greater than the average 1.4%), receives financing that grows at a slower rate (1.7%) than the rest of the Autonomous Communities as a whole (7.5%).

## Appendix 2. Unfair distribution of the budget deficit target

Just over two years ago, in April 2011, the assumption was that the **Autonomous Communities** had at their disposal a **third of the public administration's total deficit target comparable to the expenditure for which they were responsible**. Thus, the total deficit limit for 2013 was **3% of GDP**, of which **1.1%** corresponded to the Autonomous Communities.

In **July 2012**, however, this ceased to be the case and within the framework of the Fiscal and Financial Policy Council (CPFF), the **distribution of the deficit target for 2013** was officially set by the State. The joint deficit of the public administrations of **4.5% of GDP** is distributed with 3.8% of GDP for the State and **0.7%** of GDP for the **Autonomous Communities**. Thus the limit for the Autonomous Communities fell in relation, 1.1% being current until then, and very much below 1.5% (a third of the total). Catalonia vote against.

A debate took place throughout the **first half of 2013** about how to distribute a possible relaxation of the deficit targets between the various levels of the administration. In mid June the European Commission approved a **generalised broadening** of the deficit targets for community countries for the coming years, giving Spain a margin of up to **6.5% of GDP**.

In less than a week the Fiscal and Financial Policy Council approved the distribution of the 6.5% limit: **1.3%** of GDP for the **Autonomous Communities** and 5.2% for the Central Administration, including Social Security.

	Stability Programme 2011-2014 (April 2011)	Stability Programme 2012-2015 (July 2012)	Stability Programme 2013-2016 (June 2013)
Central Admin.	1.7	3.8	5.2
Auton. Comm.	1.1	0.7	1.3
Local bodies	0.2	0.0	0.0
Total Public Administrations	3.0	4.5	6.5

At another meeting of the Fiscal and Financial Policy Council at the end of July the individual targets for the Autonomous Communities in 2013 were announced, the figure for Catalonia being set at 1.58% of GDP.

Thus, **Europe has conceded more margin** to the deficit targets for Spain by means of **successive revisions**, but the **central Government has appropriated it**. In **April 2011**, the **proportion** of deficit assigned to the Autonomous Communities for 2013 was greater than a third, while **today it is a fifth**.

Furthermore, as can be seen in the following table, this **proportion dwindles even further** throughout the **period 2014-2016** until, at the end of this period, it reaches a meagre -0.2% of GDP (1/14th of the -2.8% total), far removed from the margin corresponding to the Autonomous Communities in accordance with the laws themselves approved by parliament. (Numbers in green).

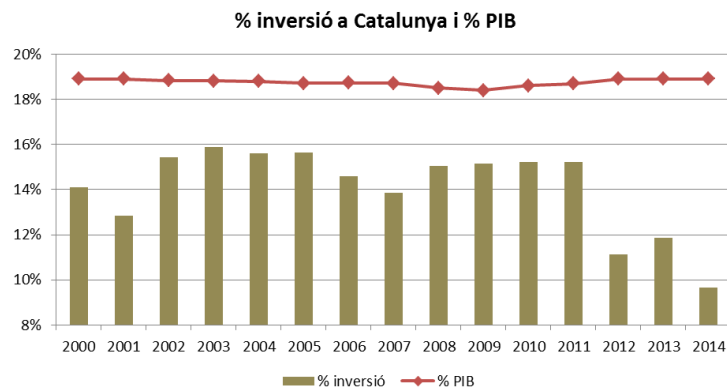


	2013		2014		2015		2016	
	Current	Law	Current	Law	Current	Law	Current	Law
Central Admin.	-5.2	-4.0	-4.8	-3.6	-3.5	-2.6	-2.6	-1.7
Auton. Comm.	-1.3	-2.5	-1.0	-2.2	-0.7	-1.6	-0.2	-1.1
Total Public Administrations	-6.5	-6.5	-5.8	-5.8	-4.2	-4.2	-2.8	-2.8

As these figures demonstrate, the State persists with an unfair and asymmetric distribution of the deficit target between the various levels of the Administration, one that is always favourable to the interests of those determining it (the central Administration).

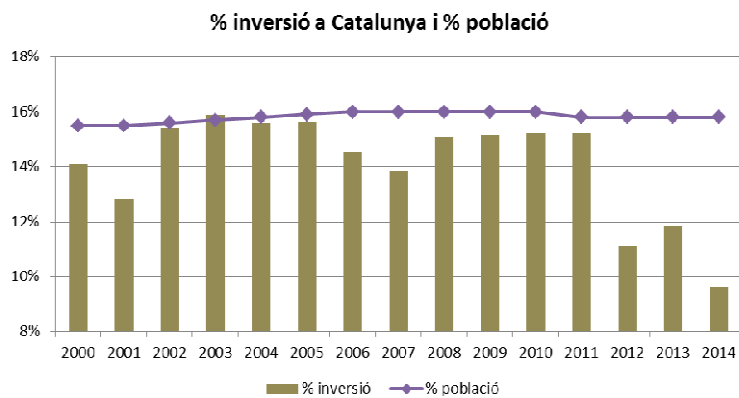
### Appendix 3. Regionalised investment with respect to Gross Domestic Product (GDP) and the population

- State investment in Catalonia **has always been lower than the level corresponding to it in terms of its contribution to GDP** and its proportion of population.
- The evolution of regionalised investment in the General State budget shows a progressive decrease of the percentage of regional investment in Catalonia and is always far removed from its economic weight within the State:



**Graph 1.** A comparison between the percentage of budgeted investment in Catalonia with respect to the State total (in copper) and the percentage of Catalonia's contribution to State GDP (in red).

- During the period 2000-2014 it was only in 2003 that the levels of investment per capita in Catalonia matched its population within the State:



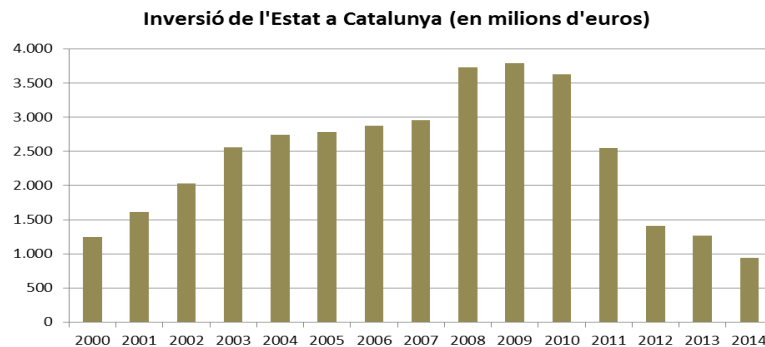
**Graph 1.** A comparison between the percentage of budgeted investment in Catalonia with respect to the State total (in copper) and the proportion of the Catalan population with respect to the State total (in lilac).

- **If we consider only the General State Budget for 2014** the percentage of State investment planned by the State is reduced to 9.6% of the regionalised total, half of its weight within the State (18.9%). **Furthermore, Catalonia is the region with the**

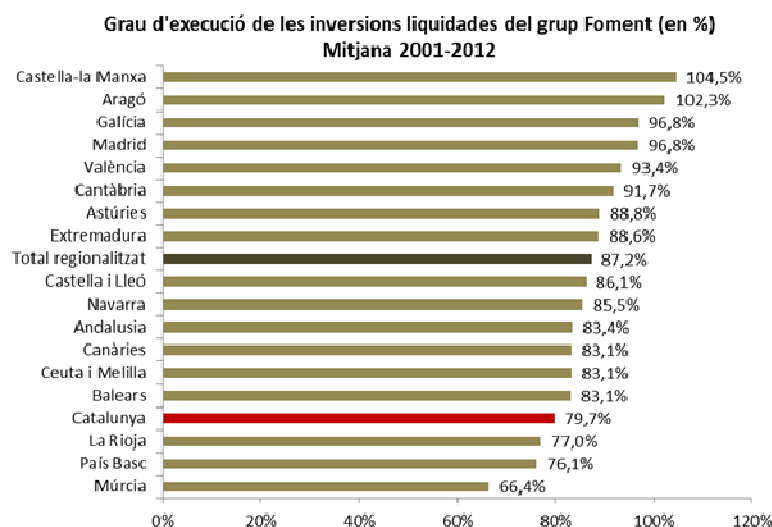
**greatest deficit between the percentage of GDP and percentage of investment (-9.2%) and is the fourth from bottom in per capita investment.**

#### **Appendix 4. Executed investment with respect to budgeted investment.**

- In 2014 the State will devote €944M investment to Catalonia, **25% less than 2013**, while investment throughout the State has fallen by only 8% on average. That is to say, the fall in investment in Catalonia is three times higher than the State average.



- But it is not enough to consider the budget for one year only. It is necessary to consider what was forecast, (**what was actually invested**) and over a long period of time.
- The liquidation of the Ministry of Public Works group in Catalonia has historically been very much lower than the investment initially planned for Catalonia. This difference has been even greater for years with the most expansive budgets. The only exception to this tendency was the last liquidated year, 2012, for which the amount liquidated was greater than the amount budgeted, albeit by a very small amount.
- During the period 2001-2012, the **percentage executed** by the Ministry of Public Works group in Catalonia was **7.5 points less than for the Autonomous Communities taken as a whole**. This places Catalonia fourth from the bottom in percentage of execution.



## Appendix 5. Fiscal deficit

At the end of May, by virtue of Law 10/2012 of 25 July, on the publication of the fiscal balances, the Minister of Economy of the Catalan government presented Catalonia's fiscal balance<sup>1</sup> with the central Administration for the year 2010. The calculations were made in accordance with the two standard methodological approximations: monetary flow and benefit flow, neutralising the effect the economic cycle has on the financial situation of the central public sector.

- According to the monetary flow method<sup>2</sup> Catalonia's fiscal deficit for 2010 was **€16,543M**, equivalent to **8.5% of Catalonia's GDP**.
- According to the benefit flow<sup>3</sup> method Catalonia's fiscal deficit for 2010 was €11,258M, equivalent to 5.8% of Catalonia's GDP.

Fiscal balance 2010	Monetary flow	Benefit flow
Central Administration expenditure in Catalonia	45,329 M€	49,319 M€

1

⌋ The fiscal balance measures the redistributive effect between the territories of the central Administration's fiscal policy. That is to say, it shows the difference between State expenditure in one territory and the volume of income subtracted to finance central public spending as a whole. There is a fiscal deficit when the contributions subtracted from one territory exceed the expenditure devoted to its citizens, that is to say, there is a net drain of fiscal resources.

2

⌋ The monetary flow method measures the economic impact caused by central Administration activity in the territory and is especially relevant in times of economic crisis and unemployment.

3

⌋ The benefit flow method measures the impact of central Administration actions on the welfare of the residents of a territory. It requires more suppositions and approximations.

Catalonia's total contribution to the central Administration	61,872 M€	60,577 M€
Catalonia's fiscal balance with the central Administration	-16,543 M€	-11,258 M€
% GDP of Catalonia	-8.5%	-5.8%

In percentage terms, according to the monetary flow method **Catalonia provides 19.4% of the central Administration's total income and receives 14.2% of total State expenditure.** Therefore, Catalonia contributes a **proportion greater than its weight in State GDP** (18.6% in 2010) and in return **receives a fraction of expenditure that does not match its proportion of the population of the State** (16%). If the fiscal balance is calculated without the Social Security (unemployment included), expenditure received by

	% Ingressos aportats per Catalunya	% Despesa rebuda a Catalunya	Diferència (pp)
Total	19,4%	14,2%	-5,2
Total sense Seguretat Social	<b>19,5%</b>	<b>11,3%</b>	<b>-8,2</b>
Seguretat social	19,2%	17,1%	-2,1

Catalonia falls from 14.2% to 11.3%.

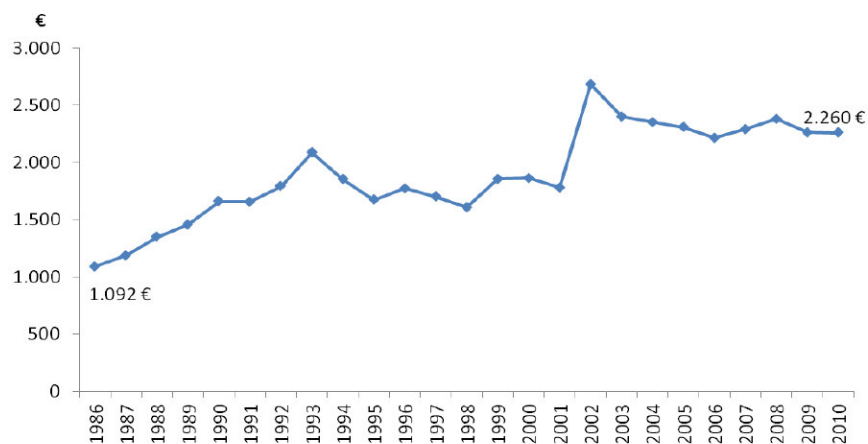
## Evolution

If the fiscal balance data for Catalonia are compared with the Central Administration (monetary flow) from 1986, the following can be seen:

- The persistence of the fiscal deficit with values that oscillate between -6.7% and -10.1% of GDP.
- The fiscal deficit between 1986 and 2010 is, on average, -8.1% of GDP.

### Balança fiscal de Catalunya amb l'Administració central

	% PIB de Catalunya		% PIB de Catalunya
1986	-6,8	1999	-7,5
1987	-7,0	2000	-7,2
1988	-7,5	2001	-6,7
1989	-7,7	2002	-10,1
1990	-8,3	2003	-8,9
1991	-8,0	2004	-8,7
1992	-8,6	2005	-8,4
1993	-10,1	2006	-7,9
1994	-8,8	2007	-8,1
1995	-7,7	2008	-8,6
1996	-7,9	2009	-8,5
1997	-7,4	<b>2010</b>	<b>-8,5</b>
1998	-6,8	<b>Mitjana</b>	<b>-8,1</b>



Furthermore, if the per capita fiscal deficit is considered, the fiscal balance (in real terms, based on 2010) has doubled over the last 24 years, from €1,092 per person to €2,260 per person.

