

WHITE PAPER

**|||| THE
NATIONAL
TRANSITION
OF
CATALONIA**

SYNTHESIS

White paper on The National Transition of Catalonia

Synthesis

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Deciding to win the future

Catalonia is experiencing a decisive process as a country and a society. Like never before, we Catalans are holding in our hands the chance to decide on our own future.

Catalonia has always felt like a nation. For a long time, it has striven to make this national feeling compatible with belonging to a State that recognises its unique features. The impossibility of continuing along this pathway has led the Catalan people to take to the streets and at the polls to express their desire to decide on their collective future and to do so peacefully, democratically and legally.

“The Advisory Council on the National Transition has identified the crucial aspects in order for Catalonia to become a State of its own with full guarantees”

For more than 100 years, political Catalanism has intensely and constructively contributed to the political and economic progress of the Spanish State, by participating and supporting all the major state decisions and submitting proposals for an amicable fit within Spain which recognises its identity and facilitates its development as the economic engine of southern Europe.

The 2010 Constitutional Court ruling against the Statute of Autonomy approved by the people of Catalonia signalled the end of this stage and the start of a new process defined by the steadfast desire of the citizens of Catalonia to decide on their own political future.

The political process in which Catalonia is involved is possible thanks to the sum and joint efforts of many wills walking in the same

direction. Fundamentally, it is the will that has been sustained and clearly expressed by broad majorities of Catalans and their civil society, as demonstrated by the thousands and thousands of organisations which have joined the National Pact on the Right to Decide. But the pact and a vast parliamentary majority are also what provide coverage for the government of Catalonia’s action to allow Catalans to exercise their right to decide at the polls.

The objective of this collective commitment is to work together based on respect for the legal framework in effect, and to rigorously define the future scenarios and the sense of responsibility in taking decisions that will define the future of our country.

The excitement and hope of our country’s chance to construct a new State that allowed everyone to unfold our vast potential, if that is what we choose, should not make us forget that this process requires a rigorous, honest exercise of ascertaining the difficulties which we are facing, identifying the risks and analysing the possible consequences of our decisions.

“We want to decide on our future, but we have to do so seriously and rigorously, aware of the pathway upon which we are embarking”

And this is the job that the Advisory Council on the National Transition has been performing over the course of 15 months. Through 18 reports, the members of this Council have identified the crucial factors that our country has to deal with in order to become a State of its own with full guarantees within the international community.



“Catalonia has always felt like a nation. Like never before, we Catalans are holding in our hands the chance to decide on our own future.”

Artur Mas i Gavarró
President of the Government of Catalonia

The presentation of these reports is a necessary step in the national transition roadmap across which our country is travelling. The citizens of Catalonia must have the maximum information on the decisions and factors that should be borne in mind when building the future structures of the State in the event that the vast majority of Catalans decide that Catalonia should become a new State.

We want to decide on our future, but we have to do so seriously and rigorously, aware of the pathway upon which we are embarking and based on total respect for the divergence and diversity of ideas, which are precisely the values that make us great and strong as a society.

“Making Catalonia a new country where everyone lives better, where the social cohesion and wellbeing of people is guaranteed”

With the same rigour with which we identify the difficulties, we must also be aware of the vast opportunity facing us in this new scenario. Catalonia has never before had such a presence in the world; we have a country with a potential that never stops growing in practically all the productive spheres; a country with

creative, dynamic human talent that pushes us as a society and a culture; a country with a committed, socially conscious civil society.

Now is the time for each person to exercise their individual freedom based on their political and ideological convictions and especially based on their personal and collective yearnings and desires for the future. It is the time for them to draw conclusions and exercise their right to decide with full awareness and acceptance of the responsibility that comes from knowing and having the utmost information to take decisions.

We are a mature, responsible society, and now more than ever we must move forward together and believe in ourselves, believe in our capacities, which are many and diverse, and unfold all our potential to reach as far as we want to, and especially to retain our constructive spirit in order to make Catalonia a new country where everyone lives better, where the social cohesion and wellbeing of all people are guaranteed.

This is our dream, and making it possible only depends on our will.

The National Transition of Catalonia

The National Transition of Catalonia

Catalonia is poised at a crucial juncture in its history. More than three decades after the restoration of the Generalitat (Government of Catalonia), the claims for self-governance and national rights are being expressed with more vigour and more across society than ever.

The institutions of the country, its political parties and its civil society have persistently worked all these years to find a fit within Spain that would fulfil Catalonia's legitimate national aspirations. In this entire time, Catalonia has managed to erect a political and administrative structure that has turned the Generalitat into the day-by-day backbone of its citizens' public life.

However, recent events, such as the Spanish law on education, the attacks on our country's model of linguistic coexistence, the law on market unity, the new state law that severely limits the autonomy of town halls and the suffocation of the finances of the Generalitat wrought by the state institutions all spotlight the excessively centralist vision and inconsistent process of recentralisation of competences and resources that the Spanish State is implacably applying. All of this casts doubt on, or even casts a pall of crisis on, the real meaning of the State of the Autonomies which the spirit of the 1978 Constitution captured in a consensual fashion.

In February of 2004, the parliamentary commission that launched the efforts to write a new Statute of Autonomy was set up. It was set up with the goal of seeking new formulas in the relationship with Spain, reinforcing the national nature of Catalonia and furthering its self-governance 25 years after the approval of the first Statute, which was showing signs

of being obsolete. After months of negotiation, and with a sweeping agreement among the vast majority of parliamentary forces at the time, the new Statute of Autonomy was approved by the Parliament of Catalonia on the 30th of September 2005.

In June 2006, the Statute was subjected to a referendum among the people of Catalonia, who overwhelmingly supported it. Once it had been approved and endorsed by the citizens, it was sent to the Constitutional Court, which, four years later issued a resolute ruling that not only cut back fundamental competences and institutions in the development of self-governance in Catalonia but also thwarted the national hopes and aspirations of an entire people. Yet instead of standing with folded arms, they took to the streets in droves in July 2010 to hold demonstrations under the slogan of "We are a nation. We decide".

The November 2010 elections led to new parliamentary majorities. As the outcome of the electoral mandate, the new government called for a new tax agreement that would put an end to the constant drain of resources which meant an annual loss of eight percent of Catalonia's GDP. This tax deficit, which seriously hinders Catalan institutions' leeway for action, has prompted an overall loss in competitiveness in Catalan society and has triggered tensions in the provision of public services to the people.

The Spanish government once again refused any margin for negotiation on the tax agreement proposed by the Generalitat, which also had broad, diverse support in Parliament. This refusal was the main event that precipitated the call for new elections.

The Parliament that emerged from these new elections was made up of a clear majority of the parties that had gone to the polls under the pledge of the right to decide, the commitment to consult the people of Catalonia on their political future. This commitment was made official with the legislative agreement between the two main parliamentary forces and with the different parliamentary initiatives that emerged from the Catalan chamber.

In recent years, sweeping social support (as proven by the historical and huge popular demonstrations on the recent Diades or national holidays), political unity of action (as shown by the agreement reached by the vast majority of political parties regarding the date of and question to be asked in the consultation scheduled for the 9th of November 2014) and scrupulous respect for the legal framework (with the approval of the law on non-referendum consultations and citizen participation) have shaped the process and political

action of what is called the national transition process of Catalonia and have revealed the Catalans' steadfast democratic will.

This will is also reflected in the establishment of the National Pact on the Right to Decide, which brings together the most representative institutions in the country which are in favour of the right to decide. All told, it encompasses more than 3,500 civil, civic, citizen, cultural, economic, social, union and business entities from all over Catalonia.

During the investiture debate of the 10th legislature, the president of the Generalitat secured a commitment to hold a consultation of the people of Catalonia regarding the country's political and national future in order to guarantee its economic, social and cultural development and its survival, to strengthen and improve its wellbeing. As a result of this commitment, a government decree issued in February 2013 created the Advisory Council on the National Transition (CATN).



Plenary session of the Advisory Council on the National Transition.

The creation of CATN reflects the government's desire to enlist the best legal and technical advice to carry out this process, which must be based on the principles of dialogue and legality, with the goal of achieving the maximum consensus possible. CATN is made up of prestigious individuals in the different disciplines associated with the national transition process, and their participation on the Council has not entailed any monetary compensation.

Its composition was as follows:

- Carles Viver Pi-Sunyer (president)
- Núria Bosch i Roca (vice president)
- Enoch Albertí i Rovira
- Germà Bel i Queralt
- Carles Boix i Serra
- Salvador Cardús i Ros
- Àngel Castiñeira Fernández
- Francina Esteve i Garcia
- Joan Font i Fabregó
- Rafael Grasa i Hernández
- Pilar Rahola i Martínez
- Josep Maria Reniu i Vilamala
- Ferran Requejo i Coll
- Joan Vintró i Castells
- Víctor Cullell i Comellas (secretary)

For almost a year and a half, this Council has held 54 plenary meetings which were captured in the more than 1,300 pages in the following 18 reports:

- Report no. 1: "The consultation on the political future of Catalonia" (25 July 2013)
- Report no. 2: "The tax administration of Catalonia" (20 December 2013)
- Report no. 3: "Cooperation relations between Catalonia and the Spanish State" (20 December 2013)
- Report no. 4: "Internationalisation of the consultation and process of self-determination in Catalonia" (20 December 2013)
- Report no. 5: "The information and communication technologies in Catalonia" (20 December 2013)
- Report no. 6: "The means of integrating Catalonia into the European Union" (14 April 2014)

- Report no. 7: "The distribution of assets and liabilities" (14 July 2014)
- Report no. 8: "Monetary policy (Euro), Central Bank and supervision of the financial system" (14 July 2014)
- Report no. 9: "The water and energy supply" (14 July 2014)
- Report no. 10: "The constituent process" (14 July 2014)
- Report no. 11: "Trade relations between Catalonia and Spain" (28 July 2014)
- Report no. 12: "Regulatory and competence authorities and administrative structures required by the European Union" (28 July 2014)
- Report no. 13: "Integration into the international community" (28 July 2014)
- Report no. 14: "Judicial power and the administration of justice" (28 July 2014)
- Report no. 15: "Catalan social security" (28 July 2014)
- Report no. 16: "The succession of governance and administrations" (28 July 2014)
- Report no. 17: "The internal and international security of Catalonia" (28 July 2014)
- Report no. 18: "The fiscal and financial feasibility of an independent Catalonia" (28 July 2014)

As the outcome of CATN's efforts, the government is publishing this *White Paper on the National Transition of Catalonia*, which contains first the series of reports issued by the Council, and secondly a synthesis of these reports issued by the secretary of the Council.

In order to be able to exercise the right to decide, it is essential to also be able to guarantee citizens' right to know so that they have as much information as possible on the different future scenarios that might occur. Thus, the main goal of this white paper and its synthesis is to provide rigorous information that contributes to making the democratic process heading towards the national transition of Catalonia stronger by providing citizens as a whole with the information they need to knowledgeably exercise their right to decide.

Synthesis

1 The constituent process

1.1 Legitimation of the process of self-determination

A defence of the process of self-determination must include the reasons that have led the majority of citizens and the government of Catalonia to choose this pathway, with a series of solid principles that are acceptable to the different stakeholders in the international community (diplomats, governments, international institutions and organisations) and that have at least the understanding if not the empathy of the media and public opinion in other countries.

The defence of this process is grounded upon three main principles: self-determination as a people's exercise of the right to democratically decide; self-determination as an inalienable right given the nature of Catalonia as a nation; and self-determination as the last resort to remedy a systematically unjust situation.

These three principles are valid (for Catalonia) and can be used at the same time, with some variation in emphasis, in the explanation depending on the international audience.

1.1.1 Self-determination in application of a democratic principle

Especially in liberal-democratic societies, self-determination is justified almost intuitively, since it responds to the democratic principle based on:

- The legitimacy of political authority based on the consensus of the governed, regarded as a unit of collective decision-making (*demos*), and even a people's ability to decide to become this unit; and
- The moral autonomy of individuals. Thus, the right to set up an independent State

is regarded as a primary right of individuals in a regional collective, as long as certain contextual conditions exist, such as the facticity of the new State (economic, political, etc.), the facticity of the previous State, the fact that the rights of minorities are guaranteed and the fact that significant international instability is not generated.

1.1.2 Self-determination as the inalienable right of a national community

Here the right to self-determination is supported by the right to sovereignty which stems directly from a given collective's nature as a national community.

Given the strength of democracy as a principle of political legitimation, today the first two principles tend to be combined to justify a process of self-determination in two sequential steps: first, because of its status as a nation, as a national community is the ultimate repository of its sovereignty, and secondly, in application of the democratic principle, as this community has the right to exercise this sovereignty.

This democratic argument has numerous advantages. First, it is widely accepted in Catalonia among its citizenry, and secondly, it has successfully been used by the government, the Parliament and those in favour of holding the consultation. It also links up well with the liberal and democratic consensus that prevails in much of the world. It is supported by an important doctrine which can primarily be found in the ruling of the Canadian Supreme Court. And it can be grounded in

the repeated declarations by the Parliament of Catalonia that it reserves the right to self-determination.

At the same time, however, it has several weak points. The first is conceptual. The second, more strategic in nature, primarily seems important for the stage that comes after the consultation or for a process which rendered the consultation impossible.

The first obstacle is that to be applied, the democratic principle requires the sovereign subject to be defined. This subject, however, is not formally sovereign (this is the reason for undertaking the self-determination process) and therefore those who are against the consultation often deny that Catalonia is a national community and fluctuate between claiming Spain as the only nation or solely accepting the self-determination of each individual separately. This is less of an obstacle for Catalonia because the Parliament has made repeated declarations of sovereignty and it reserves the right to self-determination. It also has a long series of surveys that show sweeping majorities in favour of holding the consultation in Catalonia and therefore, at least implicitly, recognising Catalonia as a unique political subject. However, to strengthen the justification of why the consultation is being held now and not earlier (such as in 1978), it is advisable to add the argument of secession as the last resort.

The second weakness is strategic. The application of the democratic principle, especially if there is no agreement with the Spanish State, creates (or reinforces) an important international precedent. Since it legitimises secessions without demanding an effort to justify them, it lowers the cost of secession and therefore increases the possibility of there being more secessions in the world. In a volatile international context, at least in some regions of the world, the mere appeal to democracy may arouse concern or hostility among recognised States.

1.1.3 Self-determination as the last resort to remedy an unjust situation

In accordance with this principal or line of argumentation, self-determination is defended as the last resort to remedy serious, persistent injustices that have not been solved within the existing political framework. Even though there is not complete agreement on which situations might qualify as serious injustices, they are (in descending order of doctrinal agreement):

- Massive human rights violations.
- Unfair military annexations and occupations, especially those that took place after the express ban on territorial conquest wars in 1945.
- Violations by the central Spanish State of the aspirations of self-governance and internal agreements on regional autonomy. These violations include the impossibility of reconciling (reasonable) demands for regional autonomy with the structure of Spain, and Spain's (systematic) intervention and questioning of regional autonomy despite the formal agreements in place.
- When a national or regional minority is a permanent minority in a democratic State, due to its status as a permanent minority, it can never have guarantees that the majority will honour the autonomous agreements. (This situation is related to – and might be complementary to – the clauses in the previous point.) The only possible remedy of this situation is changing the relations between the majority and the regional minority until they become strictly equal by granting the status of full sovereignty to the national minority.
- The international community does not request (or require) any specific justification for a people to self-determine: the only thing needed is to fulfil the procedural requirements contained, among other places, by the ruling of the International Court of Justice dated the 28th of June 2010 (democratic, peaceful process). However, it seems reasonable to explain and justify

the consultation and political process in Catalonia. Thus, using the principle of self-determination as the last resort or remedy (remedial-right-only secession) implies self-imposing a level of exigency that is higher than the principles of democracy and national law. On the other hand, this defence of the process of self-determination has major advantages: it corresponds with Catalonia's historical and political experience of exhausting all the other means of fitting within the Spanish State and with the motives expressed by the citizens of Catalonia; it stresses Catalonia's desire to contribute to reinforcing international law and to making its (legitimate) process of self-determination compatible with the maintenance of a stable international system governed by predictable laws; and it is added to the other two justifications of secession, namely the democratic principle and a national community's inalienable right to secede.

However, as in the case of the first two principles, the argument of last resort also has weaknesses. First, there is not a complete consensus on the causes that legitimise self-determination as a last resort. Secondly, the party that uses it is responsible for proving (that is, it bears the burden of proof) the existence of the unfair treatment that justifies self-determination.

1.1.4 Application in Catalonia

According to the previous discussion, the discourse of internationalising the process of self-determination in Catalonia has to be organised in accordance with the following logic, which combines the three main principles examined above in a chain of argumentation that stresses self-determination as the last resort but in no way abandons the democratic principle and the principle of national community:

- After having systematically and unsuccessfully tried to reconcile its national personality with membership in the Spanish

State, Catalonia is exercising the right to self-determination as a last resort or solution first to achieve full national recognition and the level of self-governance to which its citizens inspire, and secondly to put an end to a situation of systematic fiscal discrimination and linguistic and cultural vulnerability.

- The self-determination that aims to establish a sovereign Catalonia must be able to guarantee political and legal rights that the Spanish political system does not guarantee (and which has not consistently been guaranteed even after the transition to democracy). This sovereignty does not exclude the possibility of establishing confederal mechanisms with Spain, however only on strictly equal terms.
- Historically, when Spain's political circumstances have allowed it, Catalonia has shown a steadfast desire to organise itself as a unique political community and to recover its political and fiscal institutions which were abolished numerous times (in 1714, 1923 and 1939).
- Historically as well, Catalonia has tried to combine this desire for autonomy with its integration into the Spanish State. The kind of solution used, either federalist or autonomist, which has varied according to the historical period and political forces behind it, correspond to the usual solutions used in different plurinational countries around the world, such as Canada, Belgium, the United Kingdom and India. And they date back to at least the 19th century, with the federative schemes of the First Spanish Republic spearheaded by Catalan politicians.
- In the last democratic transition in the Spanish State, the 1978 Spanish Constitution (CE) stipulated mechanisms to give Catalonia (and other territories and regions within the Spanish State) some degree of political autonomy. However, as a result of the strategy of creating a broad consensus to make the political transition possible, and to avoid confrontation with

politicians, the military and other sectors of society that had collaborated with the dictatorship and had considerable political and coercive support to threaten the entire political process at the time, the Constitution was written in deliberately ambiguous terms with regard to the territorial organisation of the Spanish State. For example, article 2 CE used the terms 'nationalities' and 'regions' to refer to the possible national communities in the Spanish State that wanted to achieve a certain degree of political autonomy, while it reserved the term 'nation' for Spain. The constituents did not list the autonomous communities and under no circumstances did they specify which ones could be considered nationalities. Likewise, they prepared a series of minimum authorities for the autonomous governments, while they also established open procedures through which the central government could delegate competencies. The constitutional text did not establish the system of territorial financing.

- The open nature of the Spanish constitution, in other words, its nature as an incomplete contract, has always made its specific application and implementation dependent upon whoever controlled the key institutions in the Spanish State (Courts, Executive and Constitutional Court).
- In fulfilment of the possibilities ushered in by the Constitution, in 1979 a Statute of Autonomy was approved which gave Catalonia some degree of self-governance. However, the implementation of the Statute was slow and incomplete, largely dependent upon the correlation of forces in the Spanish Courts instead of on strict implementation of the legal agreements contained in the Statute itself.
- As examined in detail by the "Report on functional and organisational duplications between Spain and the Generalitat de Catalunya" issued by the Institute of Autonomous Studies (IEA), the central ad-

ministration has continued to intervene in all matters and powers of the Generalitat (Government of Catalonia), even in those which are exclusive to Catalonia by nature. As the Institute's report indicates, "the regulatory duplications [by the state and regional legislation] take place indifferently in both the spheres in which the Generalitat has exclusive competences and in those in which the competences are shared.

- In order to remedy this situation of invasion of competences (and fiscal discrimination), the Parliament of Catalonia, with the support of almost ninety percent of the deputies, approved a draft reform Statute in 2005. The goal of the new Statute is to expand the Generalitat's competences, and primarily to try to avoid Spain's invasion of these competences by using a text that is extraordinarily prolix and detailed, and to resolve a systematic fiscal affront. However, that text was emended considerably by the Spanish Courts, and once approved by the citizens of Catalonia, it was once again trimmed back by Spain's Constitutional Court in 2010. The Constitutional Court ruling not only fully deactivated the improvements introduced by the Statute in terms of recognition of the national identity of Catalonia and its language, its competences (that is, the political power) and its financing, but furthermore by cutting back the constitutional function that the Statute had served until then, it stated that its provisions, especially those on competences and finances, were not legally binding for the Spanish legislature but instead simply political pacts that did not limit the freedom of the Spanish legislature to delimit the scope of its competences or to establish its preferences in the sphere of finances.
- The process of statutory reform and the ruling by the Constitutional Court were the most reliable proof that Catalonia had failed in its attempt to earn recognition and a high degree of self-governance in a truly plurinational State. What is more, they also prove that the citizens of Cata-

lonia, as a collective with its own territorial aspirations, are a permanent minority in Spain and cannot expect to get adequate political and juridical guarantees within the Spanish State. Using truly democratic mechanisms (in the strict sense of voting within the different state powers), the majority can modify and reduce the Generalitat's competences at any time so far as to render them trivial.

- These are specific examples of the lack of political guarantees in the current system: the tax deficit with Spain; the low volume of public investment by Spain and its systematic failure to execute the approved plans; the fact that, as the consequence of the system of financing and budgetary procedures in the Spanish State, the principle of ordinality is violated (in the regional ranking of per capita income for period from 2000 to 2010, Catalonia went from being 4th in nominal per capita GDP to being 9th in available family income per capita after

Spain's budget action); Spain's refusal to negotiate a fiscal pact proposed by the Catalan political forces; and the decisions aimed at turning Catalan into an increasingly marginal language.

- In view of this situation, the only possible remedy would be to give Catalonia the authority to veto any Spanish norms or interventions that harm Catalan interests. This veto power is precisely what exists in sovereign States. And it precisely to get this power that Catalonia has decided to initiate the current process of self-determination, once again as a last resort to remedy an intrinsically unjust situation.
- This process of self-determination is ultimately supported by a national community's desire to exercise the principle of self-determination as recognised by international law (such as the United Nations Charter and the pacts approved by the UN, as mentioned above) in a democratic, peaceful way.

1.2 How to get there.

The consultation on the political future

1.2.1 Arguments to legitimise the holding of the consultation

Calling a consultation on the political future of Catalonia is a key step in paving the way for a constituent process based on the claims of civil society and the political decision of the Parliament of Catalonia. A clear, unequivocal pronouncement from the people is needed in order to begin the process of transforming Catalonia into a State in its own right, and a consultation has all the conditions needed to be the means of expressing this pronouncement.

The consultation on the political future of Catalonia itself contains a notable set of legitimacies:

Historical legitimacy. The existence of Catalonia as a unique national entity over the centuries gives it a high legitimised profile in historical terms compared to other cases in comparative politics. Having had its own state institutions for centuries which had been eliminated militarily, as well as its repeated desire to be recognised in its national specificity and to have broad self-governance – objectives which have never been achieved in a fair and efficient way in its relations with the Spanish State in the last three centuries – are all important sources of legitimation in the international sphere as well.

The consultation reflects democratic, representative, civic and participative principles. The consultation is a civil, participative practice that befits an advanced democracy in that it provides citizens from the national *demos* of Catalonia with the key decision-making power on their collective political future.

The consultation is a democratic response to a demand that has been made repeatedly by a rising sector of Catalan society and its political representatives.

The consultation reflects liberal principles: It protects the individual and collective rights of citizens. The consultation is a tool so the citizens of Catalonia can express how they want to protect and exercise their individual and collective rights given the often arbitrary political, economic, linguistic and cultural decisions to which Catalonia has been and is being subjected by the central power and the Spanish institutions.

The consultation reflects egalitarian, inclusive principles. All citizens of Catalonia will be asked to participate in the consultation regardless of their place of birth, sex, religion or ethnic group. All citizens will also be asked to participate in the prior debate, where they can inform themselves on the possible consequences of the alternatives posed, including the potential establishment of Catalonia as an independent State, and to contribute their opinions and suggestions.

The consultation is possible within the legal system today. There are very sound legal arguments to defend that in the legal system currently in place there are five procedures through which a consultation could be legally called so that the citizens of Catalonia can express their political will on the future of Catalonia.

The consultation is congruent with the principles of plurinational federalism. One principle of plurinational federalism is the voluntary pact among different national institu-

tions, a pact that can be renewed according to these institutions' democratic majorities. In this sense, federalism is one of the four principles invoked by Canada's Supreme Court – along with democracy, constitutionalism and protection of minorities – in its famous ruling on the case of Quebec's possible secession.

The consultation is natural within an advanced, cosmopolitan conception of democracy. The consultation is an exercise that is congruent with the values of cosmopolitanism, which relativises borders, especially when they have been imposed by force.

The consultation is functional: It makes it possible to emerge from the current political impasse. A consultation with a clear question and negotiations entered in good faith – as has happened recently in the United Kingdom and Scotland, or as is legally provided for in Canada – would not only allow the will of the affected parties to be determined but it would also give rise to a new political and constitutional scenario, regardless of the outcome of the consultation, that would break the impasse of the current political situation.

Citizen consultations are a common practice in the institutional sphere in democracies. Since 1990, referenda on sovereignty or independence have been held in Quebec, Bosnia and Herzegovina, Slovenia, Estonia, Latvia, Lithuania, Macedonia, Montenegro and Scotland. Directly consulting the affected people is, therefore, a widely accepted democratic procedure for resolving this kind of situation, which enables it to be done in accordance with the international parameters of non-violence and democratic appropriateness.

The consultation is congruent with historical tradition and Catalan political culture. Historically, Catalonia developed a legal corpus reached through pacts that was grounded upon constitutions. Those constitutions were nullified by the Nueva Planta decrees (1716). Today, the exercise of the right to decide is

congruent with the political history of Catalonia from prior to the aforementioned decrees.

The consultation provides Catalonia with international visibility and affirms it as a political subject. The consultation places Catalonia in the eye of international actors as a political subject with its own unique, distinct desires and decision-making capacity. Its conflict with Spain becomes visible.

The consultation has a very high degree of citizen support. From the specifically political standpoint, we should also bear in mind the considerable support for the consultation among the citizens of Catalonia. The figures show that a vast majority of citizens of Catalonia support holding a consultation on independence. Specifically, around 75% of Catalans are in favour of calling the consultation, around 20% are against it and around 5% are indifferent.

1.2.2 Legal strategies to call a legal consultation in accordance with internal law

After the Supreme Court ruling 42/2014, it has become clear that citizens in an autonomous community can be consulted on their political future as long as the goal of the outcome is not to be binding and there are legal routes in place through which it can be held. Therefore, if Spain has political will, the Spanish legal system has five possible ways to consult its citizens on their political future.

They are: articles 92 and 150.2 of the Spanish Constitution, Catalan Law 4/2010 on consultations via referenda, the Law on Popular Non-referendum Consultations and the Law Reforming the Constitution.

The legal routes that offer the most guarantees of constitutionality. Within the five routes that can be taken, the ones that fit in the best with the Constitution are: article 92 of the Spanish Constitution (CE) – especially if we include the reform of the LORMR (organic law

regulating different kinds of referenda), as well as the route outlined in article 150.2 CE, and, of course, constitutional reform, which can never be unconstitutional by definition.

The legal routes that give the Generalitat and the citizens of Catalonia a more important role and that speed up the process. If we bear in mind the criteria of giving the Generalitat and the citizens of Catalonia a leading role in calling the consultation and its implementation, as well as the criteria of the maximum speed possible, these two goals are better achieved through the Catalan laws than through articles 92 and 150.2 of the Spanish Constitution or constitutional reform. Despite this, we should not discount the fact that the use of the other routes also comes with an expression of grassroots support, either directly (such as through the exercise of the right to petition) or through town halls and other local institutions (motions to support the consultation).

Conclusion from the joint perspective of constitutional guarantees, a prominent role for the Generalitat and the citizens of Catalonia and speed. From this threefold perspective, one possible solution would entail undertaking one of the two procedures provided for in the “Catalan legislation” which ensure speed, and one of the procedures “provided for in the Spanish Constitution”, such as the one outlined in article 92. This was the criterion expressed by the Advisory Council on the National Transition in its report “The consultation on the political future of Catalonia” which was published on the 25th of July 2013.

However, the refusal of the Spanish Congress on the 8th of April 2014 to grant the Generalitat’s request for the ability to call a referendum on the political future of Catalan to be transferred to it, along with the Spanish government’s refusal to call any kind of consultation, have closed off the legal routes linked to articles 92 and 150.2 of the Spanish Constitution. In consequence, given the impossibility of using the other routes, the

consultation must be justified under the recent Catalan law on non-referendum consultations approved in September 2014 by the Parliament of Catalonia.

1.2.3 The consultation within the framework of European Union law and international law

Legal procedures to call the consultation.

Neither EU nor international law contain any provision that calls for a procedure which the Generalitat can use to call a consultation like the one being called for by the majority in Catalonia. According to both international and EU law, this affair is regarded as an issue that must essentially be dealt with internally, within each State.

Applicable rights and legal principles in EU or international law.

In these two legal systems, there are rights and principles that can reinforce the legality or legitimacy of calling a legal consultation or pursuing alternative routes. Examples are the democratic principle, people’s right to self-determination and, albeit at another level, the principle of protection of national minorities.

However, none of these three rights and principles is justiciable in the sense that they can be used before international or European legal institutions to declare the existence of binding legal obligations by the Spanish State or other States or international organisations, if applicable. This is because first, the aforementioned three rights and principles are contained in the legal instruments and jurisprudence more as values and principles than as rights in the strict sense. Secondly, because there are no procedures either in Europe or internationally that enable hypothetical demands based on these principles to be channelled with the aim of requiring that legal consultations be held or justifying the use of alternative routes. Additionally, it should be noted that the Generalitat would encounter problems of legitimacy for posing legal de-

mands, and finally, the procedures that can be used are almost exclusively not jurisdictional.

Despite this, the fact that they are not justiciable does not mean that they cannot have legal effects. Specifically, in terms of holding a legal consultation, it is quite evident that these principles, especially the democratic principle, have significant legal effects as an ineluctable interpretative criterion when interpreting and applying the articles of the Spanish Constitution and the internal laws that regulate referendums and consultations through which citizens can participate directly in political decision-making. In other words, the principles of European and international law, especially the democratic principles, as contained in the internal system of article 10 of the Spanish Constitution, require the public authorities of the Spanish State to interpret the precepts that regulate referenda and popular consultations such that, while respecting the principles and rules that govern the rule of law and bearing the democratic principle in mind, they attain the utmost expansion of citizens' rights to political participation, including the rights to direct political participation.

With regard to implementing the results of legal consultations, these principles, especially the democratic principle, may also have an extremely important effect in nuancing the merely consultative nature that the Constitution attributes to this kind of referendum and consultation. In this sense, we should recall the ruling handed down by the Canadian Supreme Court, which deduces from the democratic principle on which the Canadian Constitution is based that the Federations and Provinces are obligation to negotiate with Quebec on its separation in the event that this were the result of a referendum on the political future of this province.

These principles can also influence the relationship with the pursuit of alternative routes and the implementation of their results. For example, the democratic principle plays a decisive role in legally legitimising plebiscite

elections and more specifically at opposing any attempt to ban them by alleging that they are a violation of the purposes that elections should serve.

In any event, apart from these direct legal effects, from the political perspective these principles, and especially the democratic principle, may also lead to other less negligible effects, such as contributing to politically legitimising the use of alternative routes other than legal consultations, including a unilateral declaration of independence (UDI) and the implementation other effects, including independence. They may essentially contribute to this while helping the fact that the use of these routes and the implementation of these results cannot be considered internationally illicit. This is equivalent to saying first that the Generalitat can solicit recognition as a new State in accordance with the rules and principles that govern international laws, and secondly that States and international bodies may recognise the consultations and their results without violating any international law, if this is their political decision.

1.2.4 The implementation of the results of the legal consultation

The victory of a “yes” vote in a consultation with a direct question on independence

- **Consequences for the Generalitat.** Even though referenda and consultations are legally consultative, in a consultation with a direct question on independence, the victory of a yes-vote (therefore, equivalent to a double yes in view of the agreement signed by diverse Catalan political forces on the 12th of December 2013) would generate not only undeniable political consequences but also duties or legal consequences for the public authorities involved. Specifically, the Generalitat would be obligated to present Spain with a secession plan. It could do so by presenting a constitutional reform initiative or by suggesting direct negotiations with Spain apart

from the constitutional reform procedure. The first alternative has the political and legal advantage of scrupulous respect for the laws in effect; it has the disadvantage that Spain could block the process, which would require political solutions to be sought, or even international mediation, if needed. This would give rise to the possibility of embarking upon alternative routes, such as a UDI, in the terms outlined in the following chapter. If the Generalitat deems that the route of constitutional reform is not adequate and that it may actually be facing a new constituent process, it may ask for negotiations with Spain through a new process. However, in this case the doubt arises as to whether the formalisation of the result of this process should or can be done through the existing legal route (constitutional reform). Should Catalonia decide to formalise it through a constitutional reform, the problem lies in the final referendum, which would be compulsory and binding, yet which would have to be held throughout the entire Spanish State.

- In any event, along with the start of the negotiation process with Spain, the Generalitat would have to promote a series of actions internationally and within the European Union aimed at attaining support for the negotiation process with Spain, including the provision for possible mediation, the acceptance and presence in the international community, and the admission of Catalonia as a new European Union Member State or, perhaps, the determination of a specific status for Catalonia until its final adhesion.
- **Consequences for Spain.** From the standpoint of Spain, once the Generalitat presents the secession project, it would be obligated to open up a process corresponding to the route initiated by Catalonia: the constitutional reform or direct negotiation with the Generalitat, in this case by establishing a process that does not currently exist.
- In the event that Spain refuses to initiate this negotiating process or blocks the con-

stitutional reform by not recognising its outcome, it can be considered that a different legal procedure must be pursued, or perhaps due directly to underlying issues the problem that arises is essentially political, not legal, and it should therefore be resolved by political, not legal, means even though we should not discard the possibility of appealing to legal bodies, international ones if needed. Among the political means, resorting to international mediation might be important, such that some States and/or international or supranational agencies may be called on to act with Spain (and the Generalitat) to facilitate both the opening of the negotiation process and its implementation, given the difficulties that might arise. Yet all this does not exclude unilateral routes like a UDI as a last resort.

The victory of a “no” vote in a consultation with a direct question on independence

- **Consequences for both the Generalitat and for Spain.** In the event of a victory of the “no” vote, in addition to the political consequences, the immediate consequence or effect would be that the Generalitat could not submit a proposal to create a State of its own and/or an independent State, at least in the near future. However, we should bear in mind that this result cannot be interpreted as an option in favour of maintaining the status quo, even if this is its immediate effect; naturally, nor can it be interpreted as meaning that modifications or reforms of the current model are excluded for the future, as it cannot become petrified. This result of the consultation could prevent new reform projects from being initiated, and even new consultation projects on the creation of an independent State from being initiated after a reasonable amount of time.

The victory of a yes-no vote in a consultation with a direct question on independence

- The report issued by the Council, “The consultation on the political future of Cata-

lonia”, which was delivered and presented to the government in July 2013, did not analyse the scenario of the double question contained in the agreement signed by diverse Catalan political forces on the 12th of December 2013. However, it did provide for the possibility that in a direct question on independence, there may be references to Catalonia creating a State of its own, and that in this event federal or confederal formulas could be considered (which would be understood as equivalent to the victory of the “yes-no” vote in view of the double question agreed to by the consultation on the 9th of November 2014). The implementation of the “yes-no” vote would require a constitutional reform, most likely through the route of aggrieved reform.

1.2.5 Alternative routes if the legal consultation cannot be held

Consultations through voting held apart from the legal provisions of the Generalitat with the support of the town halls or private organisations and with the direct support of the Generalitat and town halls. These two kinds of consultations may enable us to ascertain the desires of the citizens of Catalonia on their collective political future. However, they come with clear disadvantages, such as the clash with Spain if the first of these routes is taken, an easy campaign to discredit it by actors and institutions against the consultation owing to its futility (presenting as illegal and anti-constitutional), potential low or insufficient voter turnout, a possible de-legitimisation of the results (internationally as well) and logistical organisational problems. These disadvantages seem to advise against implementing this alternative scenario.

Plebiscite elections. If there is incontrovertible evidence of the impossibility of holding the referendum or consultation on the independence of Catalonia through the legal routes outlined above as a result of the reiterated behaviour against it by the Spanish institutions, the

alternative route of plebiscite elections may be the most appropriate way to ascertain the position of the Catalan people on their collective political future. This kind of election is characterised by the fact that, once elections for the president of the Generalitat have been called, some political parties may decide to offer their voters Catalonia’s independence in their election platforms or electoral campaigns as their sole or main goal, and this could take shape in the Parliament adopting a unilateral declaration of independence (UDI) which would emerge from the elections and be preceded, if necessary, by an official declaration of the start of the process of constructing a new State, as we shall analyse in the next chapter. The arguments of legality, efficacy and respect for the democratic principle can be evoked in support of the political legitimacy of plebiscite elections.

Unilateral declarations of independence.

In theory, UDIs can occur as a consequence or culmination of plebiscite elections, which shall be analysed in the next chapter, with the goal of implementing their results. Or instead, they can exceptionally be held prior to these elections, without discarding their subsequent ratification by a referendum with popular consultation. UDIs do not fit within the constitutional provisions currently in force, although they are not necessarily in violation of any international law or practice. Nonetheless, the political legitimacy of UDIs after plebiscite elections is based on the democratic legitimacy of the new Parliament which would result from these elections, held as an alternative to the impossibility of holding a referendum or consultation and in the framework of total freedom to defend any option. UDIs which are not the culmination of plebiscite elections can be considered politically legitimate if they are the outcome of Spain having prevented plebiscite elections or having adopted attitudes that block the implementation of the results of a legal consultation.

Mediation procedures. Having reached a practical impasse once the internal legal

routes have been exhausted, there is the possibility of promoting mediation or, if needed, arbitration by an international institution or organisation (such as the United Nations) or a European organisation (such as the EU). Both parties would have to accept the procedure based on agreed-upon rules and the legitimacy of the end result of the process. This could be one way to unblock the situation, which might or might not include holding a consultation to ratify the proposed solution either at

the beginning or end of the process. This has the advantage of internationalising the political claim underlying the proposal for consultation. However, in addition to the unlikelihood of Spain accepting mediation of this kind, coupled with the complexity of the entire process, this proposal has the essential disadvantage that it would foreseeably take a long time, given the experience in other processes of this kind.

1.3 Second stage in the creation of the new Catalan State: From the consultation or plebiscite elections to the unilateral proclamation or declaration of independence

The current process in which Catalonia is involved (calling for a consultation of its people on the possibility of becoming its own independent State) is characterised by being a demand that aims to express itself in strictly democratic, peaceful terms, and one which is occurring in a region that is part of a democratic State that is also a member of the European Union and the Council of Europe, organisations which defend values such as democracy, freedom and the rule of law, and which have mechanisms to guarantee that these values are respected.

As mentioned above, this means that the case of Catalonia is quite unique, only hypothetically comparable to Scotland and even less so to Quebec. However, what makes it a unique case compared to the others is that, at least until now, the Spanish State has been opposed to the expression of the will of the Catalan people, essentially alleging reasons of legality in a sweeping sense. This attitude means that we have to consider the possibility of a different scenario than what is happening in Scotland (free expression of the will of the people through a referendum, and should the option of independence win, collaboration in implementing the result).

Therefore, if the citizens of Catalonia, through the means at their disposal, democratically expresses their political will to create a new independent State, this would open up a process to make this will come to fruition. This, in turn, could essentially happen in two different scenarios: the first would be fully comparable to Scotland and Quebec and would entail collaboration between the institutions of the Generalitat and Spain to negotiate the implementation of this will, while the second is

a scenario of no collaboration with Spain, or even its refusal to negotiate the way to bring this will to fruition.

1.3.1 Scenario of collaboration

The first possible scenario is collaboration with Spain, in which both the Generalitat and Spain agree to faithfully negotiate the way to bring the democratically expressed will of the citizenry of Catalonia to fruition, in this case, to establish its own independent State. This is the scenario which reflects a context of full democratic normality, and it is the scenario in which the process in Scotland in relation to the United Kingdom is taking place, as both parties had announced in advance, and perhaps, if it reaches this point, the process in Quebec with Canada as well, as called for by the Canadian Supreme Court in its ruling on the 20th of August 1998.

In the case of Catalonia-Spain, as noted in the preceding chapter, this scenario could take place by holding a consultation or plebiscite elections in which the citizenry of Catalonia would democratically express its desire to become its own independent State, which shall be analysed below. This would give rise to a negotiation between the Catalan and Spanish institutions to bring the popular will to fruition. This negotiation would also serve, among other purposes, to prepare for the constituent process which would have to be launched after the creation of the new State in order to fully institutionalise it.

Negotiation after holding a consultation.

First of all, the negotiation could be undertaken as a result of a consultation on the political future of Catalonia in which this choice has

won, and in consequence, Spain agrees to negotiate to implement this result. Despite the fact that the consultation is not legally binding, a result in favour of creating an independent State should, under normal circumstances, lead to the opening of a negotiation process with Spain in order to bring the popular will as expressed in the consultation to fruition. That is unquestionably the situation that best reflects democratic normality, and it also parallels the cases of Quebec and Scotland (comparable experiences which have approached the issue of the independence of a region that is part of a democratic State in fully democratic terms) and therefore the most desirable scenario.

Negotiation after holding plebiscite elections. Secondly, however, there might also arise a scenario of collaboration with Spain if, should Catalonia be unable to hold a popular consultation, Spain agrees to negotiate after an official declaration of the start of the process of creating an independent State after elections in which the political forces in favour of this option have won the majority. With this declaration, which might also occur after holding the popular consultation, Catalonia's sovereignty would be affirmed and the Generalitat would open the process to exercise this sovereignty by asking Spain to launch the relevant negotiations.

Even though it starts from the fact that Spain has not authorised or consented to holding the popular consultation, this scenario cannot be wholly discarded, even though it seems paradoxical. Indeed, the will expressed through elections – especially if the political forces in favour of creating a new independent State win a sweeping majority – might make Spain reconsider its position, especially because it would be facing a *de facto* situation which had occurred without its approval or consent, and yet nonetheless it would have to find a democratic solution that is respectful of the will expressed by the citizens, which is the appropriate approach to resolving political conflicts in a democratic State. The pressure in favour of a

democratic solution might also come from the European Union through a variety of means, since the Union would quite likely be interested in a quick, satisfactory solution to the situation for both political and, more importantly, economic reasons.

This second phase in the process would be opened and closed with two prominent formal ceremonies. It would start, especially in the case of the plebiscite elections, with an official declaration in favour of the creation of a new independent State, and at the end would close with a proclamation of independence.

The official declaration would have to be issued by the Parliament (or the government with the support of the Parliament) after a consultation, and especially after plebiscite elections. This declaration would have to be formulated such that it offered Spain the opportunity to negotiate so that this process could be held in a more orderly fashion with fewer risks and problems for all parties involved. Therefore, this declaration would have to contain an offer, which would also be a request, to Spain to negotiate the separation process, including, if needed, an appeal for international or European Union mediation and to make it possible to open this process, carry it out in an orderly fashion and overcome any hurdles that might arise. The end of this process would be a proclamation of independence agreed upon with Spain and accepted by the international community. After that, the constituent process *per se* would get underway, which would lead to the approval of a Constitution for Catalonia.

In this phase, Catalonia would continue to be part of Spain, and in consequence its legal system would still be applicable. Despite this, we should inquire whether the preparation of independence through negotiations with Spain could or should entail some change in this scenarios in several spheres for reasons to be outlined below.

This phase would have to essentially be characterised by the preparation of the birth of the

new State of Catalonia, which would entail four basic objectives:

- negotiating the conditions of the separation with Spain;
- seeking international recognition;
- negotiating the conditions for the new State to join the European Union and other international agencies;
- and internally preparing for the creation of the new State.

In this phase of the process, Catalonia would continue to be part of the Spanish State, and in consequence Spain's legal and institutional system would be applicable. However, this legal-institutional framework applicable to Catalonia would have to be modified with the goal of allowing the Catalan institutions to act beyond the competences which the Constitution currently gives them in order to form the State structures needed to create and set the new independent State into motion. It would be ideal if these provisions could be formalised in an action protocol.

1.3.2 Scenario of non-collaboration

Instruments of opposition of Spain. This scenario can occur if after an official declaration in favour of creating an independent State as the result of plebiscite elections, or perhaps after a consultation with a vote in favour of this option, Spain does not accept the offer to negotiate with the Generalitat.

In this case, a political impasse would arise with a very high potential outcome of institutional conflict. It is difficult to precisely predict how a crisis of this kind would develop and be resolved, but we can make several general observations on the matter.

On the other hand, in a scenario of non-collaboration, Spain's attitude can have varying degrees of intensity: from a passive, non-belligerent position towards the actions taken by Catalonia to move the process forward to active, belligerent opposition to any movement

by Catalonia towards becoming a State of its own. Spain has legal instruments to impugn before the Constitutional Court the Generalitat's actions aimed at creating State structure that surpass the framework of competences currently in place, as well as other actions which the Catalan institutions may take within this process which Spain might view as unconstitutional. If they come from the Spanish government, these challenges could lead to the automatic suspension of the actions impugned for at most five months, when it can be revised. Spain also has at its disposal the instrument of article 155 of the Spanish Constitution to ask the president of the Generalitat and, if this request is not heeded, the Senate to authorise by absolute majority the Spanish government's adoption of "any measures needed to oblige it (the autonomous community) to forcibly comply" with the legal or constitutional obligations which it believes have been violated or to protect the general interest which it views as infringed upon. In this vein, there are sectors that have upheld that these measures may include intervention in some institutions and/or services of the Generalitat, and even the suspension of autonomy. In the event of an extreme reaction, we should not discard the possibility of Spain resorting to the declaration of one of the exceptional states called for in article 116 of the Constitution, potentially in concurrence with another of the measures mentioned.

Limits to Spain's opposition. Spain's possible opposition does, however, have limits, in terms of both the means it may use and their likely efficacy in the middle term. In fact, the Spanish State could not adopt measures that entail a limitation, much less a suspension or suppression, of individuals' rights and freedoms beyond what is provided for in articles 55 and 116 of the Spanish Constitution. If this were the case, perhaps the European Union could even intervene through the mechanisms provided for in article 7 of the Treaty of the European Union aimed at ensuring Member States' compliance with the values upon

which the Union is grounded. This enables the EU to react to serious violations or serious and permanent violations by the Member States, leading this State to be placed under observation and to the potential imposition of sanctions. On the other hand, forcible intervention by Spain might pose very difficult and complex problems involving their implementation, which would rise in direct proportion to the scope and length, which thus might notably compromise its efficacy. Likewise, we should note that it would be very difficult to suffocate the popular will and prevent it from being expressed in the future. Even in the extreme case of self-governance being suspended, this suspension could not be indefinite, much less permanent, and therefore the people's will and the institutional will may be expressed yet again once autonomy and the normal functioning of the institutions resumed.

On the other hand, regarding the Generalitat's possibilities for action, once Spain had refused and the political impasse merged, it could try to force negotiations with Spain by appealing to a variety of actors (especially international ones, but also from civil society) that could serve as mediators with Spain. The support of a mobilised civil society might also prove to be a decisive factor for this objective. Should this pressure to negotiate fail, the alternative left to the Generalitat to implement the people's will to create an independent State would be a unilateral declaration of independence.

The alternative of the unilateral declaration of independence: conditions of efficacy. However, we must determine what the content of a unilateral declaration of independence should be, when it should happen and how it could be formalised. To be effective, a proclamation of this type can only take place when the territory can be effectively governed. This means having the basic, indispensable state structures in place for this purpose, which are mainly those mentioned in the previous section. Basically, therefore, this is the same structure that should have been prepared dur-

ing the process of negotiating with the Spanish State prior to the creation of the new Catalan State in a scenario of collaboration, yet with the difference that in this other scenario these structures will have not been able to be adequately prepared with enough time and in a climate of normality. It is obvious that the preparation and level of development of these state structures cannot be the same in each scenario, but in order for a unilateral declaration or proclamation of independence to be effective, these structures must at least have sufficient entity and capacity to ensure that they can perform their basic functions. Without this condition, the new State could not be born effectively.

The unilateral declaration or proclamation of independence, in this context, entails the desire to immediately disconnect from the institutions and legal system of the Spanish State in such a way that the authority of those institutions and the ties with Spain are no longer recognised. From that moment on, the sole public authority in Catalonia would be the Generalitat, and the legal system applicable would only be the one that emanates from the will of its institutions (including the international law that is internally recognised). However, proclaiming this will does not necessarily mean that it is truly effective, even less so if it is done immediately and automatically. It is possible that at least for a time, there might be a conflict between the two systems such that the authorities and systems of each of them may vie to impose themselves and gain control. For this reason, the effectiveness of a unilateral declaration of independence is largely conditioned by the existence of state structures with the capacity to perform the governing functions over the territory and earn social acceptance of their performance.

Finally, we should note that the unilateral declaration or proclamation of independence must necessarily entail an end of the desire to negotiate with Spain and redirect the situation towards the scenario of collaboration. Quite to the contrary, but always according to the

political circumstances, of course, the Generalitat should be open to negotiations and, what is more, to continuing the efforts to achieve the mediation, probably international, that would allow this.

On the other hand, in any scenario of non-collaboration, if there has not been a prior consultation it would be a good idea to hold a referendum to ratify the declaration or proclamation of independence which has been produced. There are several examples of this, and this option should be born in mind according to the circumstances at the time. The possibility that the declaration of independence itself could contain a commitment to hold a ratification referendum as soon as possible could also be considered. Should this ratification referendum be held, regardless of whether it is announced prior to the proclamation of independence or not, it should take place before the constituent process per se begins.

In this context, the declaration or proclamation of independence effectively gives rise to the constituent process directly, whose formal start would be deferred until after the referendum ratifying independence is held, if it is and if this option wins. The main difference compared to the scenario of collaboration lies in the fact that the period of negotiation with Spain would not exist, which would also be, as discussed above, a period of preparing for the creation of the new State and the constituent process that must then get underway. The lack of collaboration with Spain will hinder – in direct proportion to the degree of belligerence it shows – the tasks of preparing for this process. However, these difficulties should not hinder a minimally sufficient preparation and, more importantly, it should prevent all the acts and steps needed to launch and develop a constituent process that abides by the highest democratic standards from taking place.

1.4 Third stage in the creation of the new Catalan State: From the unilateral proclamation or declaration of independence to the approval of the Constitution

Starting at the time when the proclamation of independence, in any of the scenarios mentioned above, takes place, there will be a formal detachment from the Spanish legal system and the actual constituent process will get underway with the essential goal of providing the new State with a constitution. Certainly, in a scenario of collaboration, this detachment becomes effective when it is agreed upon and formally declared, while in a scenario of non-collaboration tensions and conflicts might arise that make this detachment more problematic and blurry, precisely because the parties may vie to impose their authority and apply their legal system.

Generally speaking, however, after this proclamation is issued, a constituent process should get underway (with the possibility, as mentioned above, of preceding it with a referendum to ratify independence, if it was unable to be held before) with the goal of institutionalising the new State.

From that time on, the process of writing and approving the Constitution and the regulatory framework to be applied until the Constitution enters into force must be regulated, and the interim regime must also be determined until a complete Catalan legal system is in place. In particular, this regulatory framework should regulate:

- a) the institutional system of Catalonia
- b) the interim system of individuals' rights and freedoms
- c) the interim system of nationality
- d) the interim system on the use of languages
- e) the system of succession from the Spanish legal system currently in force to the Catalan system

- f) the interim relationship with the Spanish State
- g) Catalonia's relationship with other States and supranational and international agencies (expressing Catalonia's desire to respect international law and to join the agencies that organise the international community, and in particular to continue participating in the process of European integration and to be a member of the European Union).

1.4.1 Constitutional law on the constituent process

The legal instrument to regulate the aforementioned issues related to the constituent process and the interim regime of the institutional and legal system of Catalonia can only be a law passed by the Parliament of Catalonia. Due to its purpose and content, this law would act as an interim Constitution and could be presented as an interim constitutional law. Its constitutional nature entails asking that this law be approved with the broadest majority possible, even if it is not strictly necessary in legal terms.

Indeed, in legal terms no special majority would be needed to approve this law, since the current Statute naturally contains no provision on a law of this kind. Nor would it be possible to challenge it, both because there would be no body in which to do so and because there would be no parameter of constitutionality to control it. This law would be an act within a new, original constituent process which would not be subjected to any previous procedure or to any special majority. Despite this, as stated above, to reinforce its political legitimacy it would be recommendable

that it be approved by the broadest majority possible.

The interim constitutional law of Catalonia would not have to be an especially extensive law which exhaustively regulated all the matters which would pertain to it in theory. In many of them (such as the institutional system, fundamental rights and others) it would refer to the norms that currently exist and are in force in Catalonia (such as the Statute of Autonomy, the European Human Rights Convention and even the Spanish Constitution), introducing only the changes or adaptations that were needed. The possible combination between new regulation, adaptation and referral to regulations will be thoroughly examined below with respect to each of the matters that this law should cover.

1.4.2 The constituent procedure

The constituent process must be regulated *ex novo* as there is no regulatory framework currently in force that could be applied to it. The comparable precedents are not determinant either, beyond showing certain features needed to deem that the process is being conducted according to fully democratic criteria. Some of the elements that shaped Spain's constituent process in 1977-1978 could also be taken into account. Nonetheless, what is indeed decisive is that this process can be held in accordance with the democratic standards currently in place, which should provide it with the maximum legitimacy both at home and abroad.

Based on this criterion, the basic elements of the constituent procedure should include:

- **Constituent elections.** The first step in the constituent process should be constituent elections. These elections should be called immediately after the proclamation or declaration of independence in accordance with the election laws in force at the time. Any change in the election laws might generate suspicion and contaminate the constituent process. The fact that these

laws (the ones in force at that time) are fully democratic facilitates this step and advises against making specific changes for the occasion, beyond those that are strictly necessary due to the detachment from the Spanish system (primarily related to the administration and election guarantees).

- Elections called in this way should be exclusively constituent in nature, even if the functions of the new Parliament should not be limited to drawing up a Constitution; instead, it would also have to take on the duties of an ordinary legislature.
- These exclusively constituent elections can only be omitted if the plebiscite elections have been held shortly before the proclamation of independence. In this case, largely according to how the plebiscite elections turn out, the Parliament can be allowed to start the process of drafting the Constitution of the new State after the proclamation of independence. Despite this, the possibility of holding specific, exclusively constituent elections should be carefully considered from a political standpoint, as this is unquestionably the most appropriate way to launch the constituent process.
- **The constitutional initiative.** Once the constituent elections have been held, the Parliament has to draw up a Constitution. The initiative to start its way through the Parliament can be planned in favour of both the government and the Parliament, although it is more recommendable that it comes from the Parliament under the guise of the proposal for a joint meeting with the participation of all the parliamentary groups.
- **Processing through and approval by the Parliament.** The processing and especially the approval of the Constitution should be as stringent as possible, procedurally speaking. Thus, its processing through a joint paper, the approval of the ruling in committee and finally the approv-

al of the plenary of the Parliament must all be planned. There is no predetermined majority to approve the Constitution in the Parliament. In theory, this issue could be the subject of a decision in the interim constitutional law. However, in this sense we should note that despite the fact that it would clearly be wise for the Constitution to be approved by a sweeping majority, we should also carefully assess the possibility of including a demand for a supermajority in the interim constitutional law, since, as mentioned with regard to this law, the approval of the new Constitution will not be subjected to any pre-established majority as it is a new, original constituent act. Thus, it is not necessary for the interim constitutional law to require a qualified or special majority for the Constitution to be approved. Weighing all the circumstances with the goal of fostering consensus on the fundamental rule, we could consider asking for a supermajority (absolute) to approve it in the Parliament. In any event, the ratification referendum to which it must be subjected is what provides the democratic legitimacy to the Constitution, beyond the parliamentary majority which has approved the draft.

- **Formulas for citizen participation.** Formulas for direct citizen participation must be included in the process of drawing up the Constitution, including through remote means, parliamentary hearings (with social, professional, economic and cultural organisations) and others who may design and be considered useful to strengthen the citizen participation in this process and endow the new Constitution with the utmost citizen legitimacy.
- **Ratification via referendum.** It is wholly necessary for the new Constitution to be subjected to the ratification of the citizens of Catalonia once it has been approved in the Parliament. In this referendum, as is common in all referenda of this kind, neither a quorum nor any special majority would be required.

1.4.3 The interim systems

It is recommendable that the transitory interim set-up of the institutional and legal system of Catalonia which is included in the interim constitution law be inspired by two basic general criteria. The first is to grant the maximum juridical security possible by establishing a calm, easy transition of ordinances. Secondly, the content of the future Constitution and the decisions by the new powers established through this Constitution should not be prejudged. This means acting according to a certain principle of continuity with regard to the previous ordinances, although naturally we cannot expect the pre-existing situation to remain absolutely unaltered in all respects. The detachment from the Spanish institutional and legal system will allow all decisions on the different matters to be taken as deemed most suitable, such that this would essentially entail an attitude of self-restriction among the Catalan institutions, which would prioritise security and would avoid compromising the content of the future Constitution and the policies of the new public powers that emerge from the elections.

Institutional system. The institutional system of Catalonia provided for in the 2006 Statute of Autonomy can essentially remain intact on an interim basis and only a few adaptations need to be introduced, some of which would be automatic (especially regarding limitations on the competences of the Catalan institutions, which would be eliminated without the need for any express declaration or provision), while others would be necessary and yet others convenient.

Specifically, the necessary ones should be introduced expressly in the interim constitutional law in order to fill the void left by detachment from the Spanish constitutional system. Naturally, many voids will be created by this detachment, but a decision could be made to only fill those that affect issues or elements that are strictly necessary for the new institutional system to operate, leaving the others for the time when the future Constitution and the

norms that implement it are approved. These elements that must be regulated are:

- The figure of the Head of State, especially in terms of the attribution of the role of supreme representation of the new State, both at home and abroad. It seems reasonable to attribute this role to the president of the Generalitat on an interim basis and to avoid creating a new institution, although naturally the decision taken by the future Constitution should prevail.
- The judicial power, including both the organisation and competences of the legal bodies as the government of the new judicial power of Catalonia.
- The regulatory bodies. Even if they are not institutions per se, their existence means that they should be updated in order to ensure that the political, economic and legal systems operate properly. Just as these agencies are essentially part of the State today, there should be plans to create them on an interim basis or to attribute their functions to bodies within the administration.
- In terms of the suitable adaptations, they should be assessed according to the circumstances at the time. These possible institutional adaptations might include the Council of Statutory Guarantees (to rethink, if needed, its functions and the value of its rulings on an interim basis, especially with regard to control of the laws on the fundamental rights and freedoms). Despite this, in virtue of the principle of continuity outlined above, the most reasonable scenario would be to introduce the minimum changes and await the new Constitution.

Rights and freedoms. The interim constitutional law should establish the provisions needed to ensure people's rights and freedoms until the new Constitution enters into force. Given that the catalogue of rights contained in the current Statute cannot fulfil this purpose because of its incomplete, complementary nature with regard to the constitutionally recognised rights, a good alternative

course may be to include the recognised rights in the main legal instruments in force in Catalonia to date in the new institutional system on an interim basis, especially title 1 of the Spanish Constitution (especially article 10 and chapters II – rights and freedoms – and III – guiding principles of social and economic policy, while adapting chapter IV on guarantees). The rights recognised in the European Human Rights Convention could also be included, without the need to ratify them for the time being, as this ratification could be delayed because of the need both to have the new Constitution and to wait for the new Constitution to be accepted in the Council of Europe.

Nationality. The system of Catalan nationality should be decided by the future Constitution and the rules that implement it, but it is necessary to regulate this issue on an interim basis since it determines the personal element of the new State and the range of people that enjoy full political rights and can participate actively in the constituent process through suffrage. In this sense, we should note that there are no pre-established norms, but the principles and criteria contained in the 1997 European Convention on Nationality could be taken into account, even if they have not been ratified or even signed by most European States, including Spain.

The interim legislation on nationality might be based on the rule of Catalan citizenship contained in the current Statute of Autonomy (article 7), which states that Spanish nationals who reside in a municipality in Catalonia for administrative purposes are Catalan citizens. What is more, we should consider the possibility of allowing everyone with a real tie to Catalonia but who do not reside there at the time when independence is proclaimed to gain Catalan nationality. This implies at least two possible extensions of the initial circle of Catalan nationals: first, Spanish nationals living in Spain who were born or who have resided in Catalonia, or who have a Catalan parent (or with Catalan ancestry up to the degree deemed

appropriate); and secondly, Spanish nationals living abroad whose residence for administrative purposes has been Catalonia (or who have lived there for longer than a given period of time) and their descendants, if they have kept their Spanish nationality; and others who have a Catalan parent or Catalan ancestors to the degree deemed appropriate. In these cases, Catalan nationality must be solicited by the interested parties.

It would be worthwhile for Catalan law to regulate this matter based on the criterion that acquiring Catalan nationality is not conditioned upon giving up Spanish or any other nationality. We should expect the Spanish State to act reciprocally. In any event, given the transcendence and complexity of the issue, which also affects European citizenship, it would be wise to reach an agreement on nationality with Spain as soon as possible that would regulate these issues in accordance with the principles of the Convention and criteria of reciprocity.

Naturally, people living in Catalonia with non-Catalan nationality would enjoy full civil, social and political rights, with the exception – for political rights – of those that are reserved for Catalan nationals (primarily the right of suffrage, especially in legislative elections, and the right to hold a government job that implies public authority), without prejudice to any agreements that might be reached with the Spanish State and the status applicable depending on their relationship with the European Union.

With regard to foreign, non-Spanish nationals, it should be noted that the Catalan laws must adopt the appropriate provisions which should be grounded upon the general criterion that these people can continue enjoying the rights they already have (especially regarding work and residence).

Language system. The future Constitution and the law that implements it would have to establish the language system. During the constituent period, however, the applicable system until the new language system enters into force must be determined on an interim basis. This system should be inspired by two basic criteria: first, granting Catalan full recognition and use in all spheres, and secondly, keeping continuity in the uses of Spanish. This would entail adopting the proper measures to ensure that Catalan is a language of general, ordinary use in Catalonia and keeping recognition of and the right to use Spanish. The application of these criteria would mean adopting suitable measures, at least in the sphere of the public administrations (access to government jobs and language uses), the administration of justice (especially providing places and legal procedures) and education. These measures should also be accommodated to respect the current system of Aranese, without prejudice to any future developments that might apply.

The regulation of this series of systems and relations with the Spanish State, the European Union and the international community shall be analysed in the following chapters.

1.5 The Succession of Governance and Administrations

Until the constitution of the new independent State, a full legal system will be in force in Catalonia that is applicable across the entire territory. The existing legislation in Catalonia has a dual origin. On the one side, there will be the legislation passed by the Catalan Parliament and the autonomous regional and local Catalan institutions, within the framework of the competences established in the Spanish Constitution and the Statute of Autonomy. On the other side, also underpinned by the text of the Constitution, there will be legislation derived from the central institutions of the Spanish State that are applicable in Catalonia in a direct or supplementary way in accordance with the distribution of powers in the various areas. With relation to this last aspect, purely for illustrative purposes and without intending to provide a comprehensive list, it is worth specifying here that the sectors of the legal system that are regulated by the legislation at a state level include the legal regime of fundamental rights, the judiciary system, criminal law, commercial law, employment law, procedural law, general economic and credit legislation, and key areas of civil and administrative law. This dual origin of the current law in Catalonia means that, when it is founded, the new State will have to rule on the validity of each of these two types of legal regulations because, despite their differences and own particular features, both share the same foundation - the Spanish Constitution, which will no longer be a higher regulatory parameter in the new independent Catalan State.

The new State will therefore have to make a legislative decision regarding the law that should be considered in effect in Catalonia, both in terms of the applicable legal regulations and institutions that must apply them, as

well as any necessary adaptations to the new reality that may be required. In this respect the existence of a new State necessarily means that the law of another State, from which the new State has separated, can no longer be considered applicable without a legislative act that declares the continuity of the law's application and validity, not as a result of the prior situation, but rather as a legislative act of the new State.

The legal proceedings required to deal with this issue must have two fundamental objectives: guaranteeing the integrity of the legal system and establishing the law in force in Catalonia within the new institutional framework derived from the creation of the independent State. In this respect, as an initial criterion, it will be necessary to act in accordance with principles of legislative continuity and legal certainty. In other words, with the necessary adaptations, the large majority of the legislation in force at the time of independence will continue to be in effect in the new Catalan State. This legislative continuity will ensure the basic principle of legal certainty for citizens and the protection of their rights, as well as responding to the reality of the circumstances: It is impossible to replace an entire legal system from one day to the next, or even with months to plan the transition. For this reason, this is not a reasonable expectation given that, despite the political change of sovereignty, the ordinary operation of social and economic life will be based on the principle of continuity, without sudden disruptive or revolutionary changes. This legal continuity will also reinforce the will to ensure economic and social stability throughout the national transition process which guarantees people's rights and assets.

The technical approach to the issue of the succession of governance would be conducted through the inclusion of a specific provision for this purpose in the Interim Constitution Law. If the preferable solution described above were not immediately viable, for reasons of urgency, a provisional alternative may be the approval of an *ad hoc* law by the Catalan Parliament or even a decree law by the Government that will later be subject to parliamentary approval. Subsequently, the definitive Constitution of the new State, in a supplementary or interim provision, will all need to make reference to the succession of governance in relation to applicable law at the time at which the new constitutional text comes into effect.

The provision that regulates the succession of legal governance must have at least the content proposed below:

“The state and autonomous regional legislation that is in force in Catalonia on the date on which its independence is proclaimed will remain in effect and applicable until its is amended or repealed by legislation approved by the bodies of the new State in all aspects that do not contravene the present Interim Constitution Law. Any references made to the authorities and bodies of the Spanish State in the legislation shall be understood to refer to the equivalent Catalan authority or body”.

In short, this will involve the minimum regulations in relation to the succession of governance but, with clarity and legal certainty, will guarantee the applicability of the regulations of various origins and the mechanisms for their amendment or repeal, within the framework of the Interim Constitution Law. The content of this provision does not exclude the fact that the Interim Constitution Law itself may also incorporate express references to certain legislative validity, repeals or amendments in particularly sensitive areas.

1.5.1 Legislative programme of the new State

This legislative programme will initially have to be implemented within the framework of the regulations of the Interim Constitution Law and, subsequently, within the framework of the definitive Catalan Constitution. In this respect, the legislative programme will have to respect the character of the higher legal regulations of the constitutional provisions that will surely affect the applicability of the rest of the legislation. Within this context, the legislative programme must address the following regulatory requirements: perfecting the institutional structure of the new State; the progressive approval of new Catalan laws that replace those implemented by the institutions of the Spanish State in any of the various areas of legal governance in which they may be required; the adaptation of the law approved by the Catalan institutions before the creation of the independent State to reflect the new situation, if required. Logically, priorities will need to be set in each of the general rubrics of this legislative programme, which the new Catalan State will have to define gradually based on the needs that arise from the new social and political reality.

In the organisational plan, the preparation of the legislative programme could be undertaken by a research committee in the parliamentary of government headquarters which would include the presence of parliamentary groups, government ministers, legal services of the legislative authorities and executive bodies, professional corporations, specialist institutes and the law faculties of Catalan universities. The way in which this committee functions must be effective and flexible, so that it can work specifically by areas or topics of legal governance with the occasional collaboration of specialists in each particular field.

Lastly, it should be noted that, in order to ensure full respect for the principle of legal certainty throughout the entire process of succession of governance and the progressive implementation of the new Catalan law, the

services of the Parliament of the Official Catalan State Gazette (DOGC), or a collaboration between the two, will need to draft charts of valid and repealed legislation in all sectors of governance. These could be incorporated as annexes to particular laws or other regulations, as well as drafting consolidated texts of certain regulation in particular and compilations of legislation according to topics.

1.5.2 Succession of regulations and the institutions that enforce them

In this process of succession of States and governance, it seems clear that the institutions of the new Catalan state will directly assume the functions that currently legislation assigns to certain institutions of the State, or these institutions will simply be abolished. As such, the State Inspection Authority in the field of education, for instance, would cease to exist, as it would no longer have any sense, as would the Regional State Administration and the sub-delegations of the government in Catalonia. Meanwhile, in the case of certain bodies that do not have a headquarters in Catalonia, a specific regulatory provision will need to be adopted. In this respect, there is obviously no Constitutional Tribunal or Supreme Court in Catalonia, or the General Judiciary Council, the State Council, the Economic and Social Council, the Bank of Spain, the National Stock Market Committee, the National Market and Competitiveness Committee, with their corresponding regulatory powers, to give a few examples. However, Catalonia does have the Supreme Court of Justice, the Council for Statutory Guarantees, the Public Ombudsman, the Public audit Office, the Audiovisual Council of Catalonia, the Legal Advisory Committee, the Catalan Tax Agency, the Catalan Data Protection Authority and the Catalan Competition Authority, among others. In all of these and similar cases, the institutions of the new independent State will have to regulate which agencies that already exist in Catalonia under the legislation before independence can

replace agencies of the State with respect to their regulatory, fiscal and penal functions, or, in other words, with respect to the application of laws of Spanish origin that apply in Catalonia.

With respect to all other civil servants, authorities and institutions with a headquarters in Catalonia, the regulatory adaptation of the succession of governance and succession of States involves fewer problems. This could be defined as a question of staffing resources as, in the case, for instance, of judges, magistrates and public prosecutors, property and commercial registrars, judges in charge of the civil registry, notaries, and labour and tax inspectors, among others, the civil servants and officials required to apply the law in the new State already exist and will continue to do so. Clearly, the people that perform these specific duties at the time of independence may take the personal decision to leave Catalonia. However, it must be assumed that substitution mechanisms will be found in these circumstances and that the majority of civil servants will continue to perform their duties and will oversee the application of the law declared to be applicable.

1.5.3 Autonomous regional law and State law

For the purposes of the conversion of the autonomous community of Catalonia into a State, the distinction that has been made to date between State law and autonomous regional law will no longer be applicable, as all of this legislation will hold the status of Catalan State law. In other words, from the creation of the independent Catalan State, the law in force in Catalonia will be unified, although there may be a period in which legislation of dual origin remains in effect (partly from Catalan institutions and partly from Spanish institutions), until such time as the legislation from the Spanish State is gradually replaced by new legislation passed by the regulatory bodies of independent Catalonia.

The coexistence of concurrent pieces of legislation regarding the same subject will have to be dealt with on a specific basis in the legislative programme of the future Catalan State. Within this programme, from the very beginning, express forecasts must be included in terms of the succession of governance in several areas, with specific references to declarations of applicability and repeal, as well as with respect to the legislative adaptations required in certain sectors. Within the framework of this legislative programme, the fragmented historical background of the Catalan legislation derived from the institutions of the new independent State will progressively have to be eliminated, with the full integrity of the legislation being achieved from the moment it is amended, probably simultaneously in certain areas, both in terms of legislation originating at an autonomous regional level and fundamental and general law coming from the Spanish State level.

1.5.4 Treaty and Supranational Law

Laws arising from international treaties and supranational laws play a significant role in the legal governance currently in force in Catalonia, both in terms of the system of fundamental rights and freedoms and the economic system.

With respect to fundamental rights and freedoms, it should be noted that, in principle, the recognition established in international instruments and treaties ratified by Spain will not govern Catalan citizens in the new independent Catalan State. In this respect, the application of this legal regime regarding fundamental rights and freedoms to Catalonia would require the ratification of the corresponding international instruments by the new Catalan State, subject to another legal regime derived from the succession of States with respect to the succession of treaties. In addition, the incorporation of treaty law on fundamental rights and freedoms from the very beginning

within an independent Catalonia could be implemented through a unilateral act of acceptance or remission by the new State.

With respect to European Community law, the issue is more complex as, without entering into the possible routes of Catalonia's integration into the European Union which is discussed in later sections, the law in force in Catalonia at the time of independence has two sources: European Union law and internal law (state and autonomous regional law) which enacts or transposes it. In the former case, the application of the regime would result from belonging to the European Union as a Member State, with the application of all of the treaties and regulations. Meanwhile, in the second case, the application would result from the State or autonomous regional legislation that has enacted the European Community directives throughout the years and declared to be in force by the Interim Constitution Law of the new Catalan State and the subsequent regulations. Under these terms, part of European Community legislation would remain in force in Catalonia, along with the transposition legislation (State and autonomous community level) that may exist, whereas the European Community legislation that directly applies through legislation and other regulations of the EU *acquis*, in principle, would not continue in force, according to the same criteria that applies to international treaties and supranational laws of international organisations. In any case, there would be nothing to prevent the competent Catalan institutions from unilaterally pronouncing acts of acceptance or remission, either partially or totally, in relation to the aforementioned regulations of European Union law.

1.5.5 The Succession of Administrations. Principle and techniques

The basic principle that must be guaranteed in any responsible and purposeful process of succession of Administrations is the "principle

of continuity of public services”, according to which the process of substitution must be conducted without prejudice to the continuity, regularity and quality of the set of public services provided to the general public. In fact, the principle of continuity constitutes a general principle applicable to both the regulatory field, in which the aim is to ensure that all the legislation required to resolve particular problems is in place, and in the administrative sphere, in which the aim is to ensure that the general interests identified and regulated by this legislation is fully served. Moreover, in this administrative sphere, the maintenance and continuity of public services is the very aspect that justifies the existence of a service organisation such as public Administration and the application of a single regime to this Administration, superseding private law, based on institutions, principles and techniques designed to ensure permanence and stability (such as the civil service, the public goods regime and public procurement, among others). Ideally, what this would mean is that an operation such as the substitution of one Administration by another is conducted without interruption or any other type of disruption for the general public that deal with or use the services provided by these Administrations. Achieving this objective, which is not at all simple, becomes even more complex when the public services are not directly provided by the responsible Administration, but rather they are commissioned by the Administration to a private contractor or concessionaire.

As well as this principle, which is clearly designed to protect the interests of the general public, it is also advisable to address individual rights and interests that may be directly affected in the event of a succession of Administrations, in accordance with the values and principals of the state of law. In particular, it must be ensured that the Administration is fully subject to that law, the principle of legal certainty and some of its more significant applications with respect to relations between the Administration and the general public,

such as respecting the active legal situations of citizens (freedoms, subjective rights and legitimate interests) and the liability of the Administration for damages caused, whether this is in the course of contractual or non-contractual relations.

Configuration of the new Administration.

An independent State obviously has full liberty to configure its own Administration and, in terms of many aspects, it can be constructed from scratch. However, in the case of Catalonia, it is equally clear that a succession of Administrations would take place between the Spanish State and the new Catalan State. These two elements mean that it would be highly desirable for the Catalan State to have an agreement with the Spanish State within a framework of cooperation in good faith between the two with respect to the transfer of the Administration’s goods and rights of the preceding State to the Administration of the successive State and the establishment of the regulations required to achieve an orderly and successful administrative succession in terms of all aspects that affect third parties (staff providing services to the administration, contractors, private individuals who perform public duties, citizens that have proceedings under way or rights acknowledged by the Administration, relations with other Administrations or with other public and private bodies). It would be extremely useful if this framework of cooperation and negotiation began during the phase prior to the constituent process. In other words, the framework should be in place between the adoption of the decision in favour of creating the new State and the declaration of independence. In this way, the initial settling period of the new independent Catalan State would be made significantly easier.

Negotiating bodies. In order to establish this desirable cooperative framework with the Spanish State, the standard procedure involves designating a high-ranking political representative who, together with a representative of the predecessor State, establishes a committee to execute the succession of the

respective Administrations. This committee must have an equal standing in terms of the rank of the representatives and establishing their regime and their operation. Instead of the equal committee option, alternative organisational solutions can be considered that are most flexible and specially designed to tackle the various issues to be resolved in a specific process of succession of States.

The usefulness of internal precedents (the experience of the Mixed Committee of Spanish State-Catalan Government Transfers) is undeniable. However, it also has to be set within a relative context, as the objective of the succession of States is not a partial succession between public Administrations, such as those experienced in Spain in the 20th Century, but rather the total and universal succession of one Administration by another in the territory of the successor State. The objective is not political and administrative decentralization through the recognition of the autonomy of a part of the State, without prejudice to the unity of this State, but rather the recognition of the independence of a part of the State's territory and, therefore, the effective attribution and recognition of its full sovereignty. The position of the parties involved could not be the same nor could solutions be adopted that presuppose the existence of a plural system of public Administrations as, by definition, the objective is to enable the separation or independence of these Administrations.

Based on this reasoning, the configuration of the negotiating bodies must be founded on different base to those established to date. In particular, all of the regulations applicable to the negotiation process must be adopted by mutual agreement. The composition and operation of the negotiation body (or the other organisational cooperation structures, if applicable) has to enable the maximum institutional balance between the two representative bodies. A schedule and working plan should be agreed and executed rigorously. All of the information available must be shared with the maximum degree of good faith. The agreements must be

duly negotiated in good faith and both parties must make every effort to implement them within the shortest possible time and in accordance with the agreed conditions. Within this framework, international supervision and mediation cannot be ruled out if the representatives of Spain do not cooperate in good faith.

The scenario of non-cooperation. Recourse to international mediation must also be considered for the hypothetical situation in which the succession of Administrations between the Spanish State and the new Catalan State took place in the eventual and undesirable scenario of non-cooperation between the two parties. In this respect, in a case of a disputed secession, the negotiations for the succession of Administrations between the Spanish State and the independent Catalan State would have to take place within an international framework, and the resulting agreements would have the status of an international treaty. As such, non-compliance would result in international liability for the party in breach. In such a context, Catalonia would have greater capacity to negotiate. However, the negotiations would begin, in principle, subsequently to the secession taking effect, which cannot be seen as positive for the orderly execution of the process of succession between Administrations or for the legal certainty of the natural and legal persons affected, particularly the public administration staff of the predecessor State who would otherwise be transferred to the successor State, contractors and concessionaires of this Administration, and for the citizens who use the public services.

1.5.6 People providing services to the Administration

In Catalonia, the transition of an Administration that is simply autonomous to the Administration of a sovereign State requires a number of significant questions to be addressed in relation to public sector workers. In particular, it will be necessary to address the need to have new staff available to perform the new State

duties and, therefore the need to resolve the situation of people who provide services to the State within Catalan territory or who perform duties directly related to this territory.

First and foremost, it is obvious that it will not be possible to deal with the quantitative and qualitative increase in functions that will accompany independence without having far more staff than is currently integrated within the Administration of the Generalitat (224,635 people), taking into account the fact that the Catalan institutions will not only have to take on the functions that the regional Administration of the Spanish State in Catalonia, but also all of the functions that it performs at a central State level. These new staffing requirements may generate public employment opportunities, particularly in the first few years, which will require the organisation of successive selection processes to hire new staff.

Incorporation of staff from the current State Administration. In the event that Catalonia has to address new staffing requirements, as we have just seen, it seems logical that a significant proportion of these requirements can be fulfilled with the staff that already provide these services to Catalonia for the Spanish Administration (approximately 30,000 people). For the Catalan Administration to take on the competences that the Spanish Administration performed until the declaration of independence, the resources in place to exercise these competences and also the employees (civil servants, interim staff, permanent and temporary employees) that the Spanish Administration had would need to remain integrated in the Catalan Administration. This particularly refers to the staff that provided services to the regional Administration of the Spanish State in Catalonia, without ruling out the option of assimilating a proportional amount of the public employees of the central State's services within the Catalan Administration. This must always be based on the understanding that all of the employees' free decisions to accept or reject the option of assimilation will be respected at all times.

This conclusion is reinforced both from the perspective of the interests of the Catalan institutions, which will be better able to ensure the services undertaken if they have experienced professionals, and the personal and family interests of this collective, including a great number of people in the case of professional based in Catalonia who may have the political status of Catalans or have roots and strong links in this territory.

The design of this staffing policy must take into account the historical precedents available, the heterogeneous nature of the staff who provide services in Catalonia, both in terms of their functions and the nature and legal regime applicable to their links to the Administration, the requirements of the human resources management in the new State. Above all, the policy design must take into consideration the various scenarios that may take place, in terms of whether or not the Spanish State cooperates when it comes to implementing the result of a democratic declaration of the general public in support of the independence of Catalonia.

1.5.7 Regime of the implemented administrative acts, the proceedings in progress and related information.

As well as maintaining the Spanish State legislation in force (with an interim nature and until replaced by legislation passed by the institutions of the new independent State), for obvious reasons of legal certainty, it will be necessary to consider the maintenance of the validity and effectiveness of the implemented acts of this legislation that affect the citizens of Catalonia and which has been adopted by the Spanish Administration prior to the date on which independence becomes effective, particularly in the case of acts that are firm in accordance with the applicable legislation (i.e. in all cases in which the affected individuals have not lodged administrative or legal appeals within the corresponding period or have done so unsuccessfully).

This solution, which without doubt is the most reasonable from the perspective of legal certainty and the protection of the rights acquired, cannot have an absolute effect on Catalonia's constituent power or the decisions of the constituted powers. Moreover, insofar as these decision may affect the consolidated situations of the individuals involved, it will be necessary to make certain distinctions. In that way, sacrificing the rights and interests created could, in principle, be indemnified (in accordance with the guarantees protected by legal institutions, such as compulsory acquisition or the Administration's financial liability), while it would not be necessary to indemnify cases that could simply be considered expectations. Meanwhile, distinctions would also have to be made between the definition of rights by the new legislator (legal definition that could eventually affect the powers inherent to each right more significantly), and the expropriation limitation of rights which, as a means of suppressing rights, can only be considered legitimate if it were accompanied by the corresponding indemnity or compensation.

Administrative proceedings in progress.

With respect to administrative proceedings that affect Catalonia and which are in progress but, as yet, a ruling has not been made, the general rule will have to be that the case is transferred to the Catalan institutions so that these institutions can oversee its resolution. This transfer will have to take place on the date on which independence takes effect, unless the institutions of the Spanish State and the Catalan institutions agree a different date. In any case, as there is a set timeframe within which the legal ruling on these proceedings must be made, after which the effects of administrative silence (upheld or dismissed) come into force, these timing aspects must be taken into account when setting the conditions or the date of the transfer. Another aspect to be taken into consideration is the autonomous nature of the proceedings linked to previous proceedings.

In other words, proceedings with challenged rulings or appeals lodged against previous

rulings, as well as proceedings in progress subject to enforcement of previous administrative rulings, will have to be considered as new and independent proceedings from the previous circumstances and be transferred on an equal basis to the jurisdiction of the Catalan authorities. In the case of administrative appeals, as their objective is to review a ruling that has already been adopted, the regulations in force with respect to transfers state that the resolution of these appeals should be made by the Administration that made the original ruling, even though the final ruling will have to be adopted after the transfer of the particular function to the Autonomous Community.

However, this last regulation, the logic of which is still based within the context in which it was passed and has been applied, may be replaced by another regulation that is better suited to a case of succession of States, by which the resolution of the appeal would be ruled by the new Catalan Administration. In any case, the determination of the applicable regime has to take into account the difficulty in applying uniform or general rules to such a rich and varied reality as the relations between the Administration and the citizens. In particular, other aspects that should be taken into consideration include the processing status of the proceedings, the legally established timeframe for ruling on the proceedings in each case and the fact that the inactivity of the Spanish Administration may be prejudicial to the new Catalan Administration (for instance, in the case of the prescription of an action to penalize illegal conduct or to demand payment of taxes that have been disputed by the taxpayer).

Transfer of documentation. The succession of Administrations also involves the transfer of all of the documentation related to the administrative records that are filed or open, all of which pass over to the jurisdiction of the new State. To provide greater guarantees and security within the transfer of information, it is usually necessary to draft a detailed inven-

tory and to formalize the transfer in an act of submission and reception that is authorized or signed by the competent authorities of both Administrations. This procedure has not always been rigorously implemented in the transfer process of State functions and services to the Generalitat. In general, the obligation to transfer the administrative records covers all of the files and registers in the possession of the predecessor State that affect or are related to the territory of the successor State with the corresponding reference to the 1983 Vienna Convention on the issue, as will be explained in later sections.

1.5.8 The succession of contracts

The succession that must be effectuated between the Administration of the predecessor State and the Administration of the successor State involves an obvious level of complexity in the case of contracts signed by the former with respect to the execution of its functions: the appearance of a third party on the scene, a legal or natural person, a designated contractor. By virtue of a bilateral legal negotiation held between with the Administration, the contractor has contracted certain obligations (to provide or perform). However, they also hold certain rights and, principally, the right to receive payment in exchange for the services provided to the Administration, whether directly, with payment from the Administration, or by charging fees paid by the individuals involved.

The succession of contracts, therefore, involves the special condition that it affects a party other than the Administration of the two States. The contractor has rights acquired and protected by the legal system and the responsibility to act as a collaborator required by the Administration in the performance of the functions attributed to it. In this respect, if it does not state its intention to the contrary and suitable measures are not taken, the fact that another Administration assumes these func-

tions may lead to the sudden annulment of the contracts held or their termination or cancellation. This would result in an obligation to indemnify the damages and losses incurred by the affected contractors and may have a significantly negative impact on the continuity of public services, as it would involve a considerable paralysis of the construction projects in progress, the provision of public services and the supply process of goods and services required by the Administration and the general public. The new independent Catalan State could prevent all of these potential negative consequences of the succession of contractual relations based on the understanding of the complex of the specific cases involved in this phenomenon and by adopting the necessary measures to deal with the situation.

Diversity of situations and contractual regulations, and the specific cases of the applicable solutions. The regulation of public contracts constitutes a particularly extensive, complex and rigorous section of the legal system, which was exponentially intensified when Spain joined the European Community (known today as the European Union), based on the will and determination of the State's institutions to guarantee the free movement of goods, services, capital and people. For the purposes of ensuring these freedoms and faced with a significant economic reality such as the public contracting market, successive European directives have been passed to guarantee the principle of free competition and its essential premises: advertising, freedom of access and transparency.

The analysis of this regulation (which is principally contained in the consolidated text of the Law on Public Sector Contracts, approved by Royal Legislative Decree 3/2011, dated 14th November, hereinafter LCSP) clearly highlights the complexity of this sector of the legal system, both in terms of the diversity of the subjects to which it applies (subjective spheres) and the varied range of types of contracts that exist. In addition and above all, the sector is complex due to the fact that,

based on a set of principles and the regulation of general or common bases, the regime applicable to each contract has its own particular and significant features depending on the contracting public body, whether or not it exceeds certain economic thresholds and the field or sector to which the contract refers.

The multiple nature of these situations and contractual regimes represents an obvious added difficulty when establishing the solutions applicable to the succession of the Catalan Administration in place of the Spanish State as the contracting party with respect to the contracts which affect Catalonia. This situation may mean that these solutions can not be uniform or standardized in all cases. First of all, it will be necessary to distinguish between contracts related to goods and services entirely located within Catalan territory and contracts that affect this territory but also elsewhere. Moreover, the fact that the contracting Administration is the Administration of the State or a public body linked to it presents as with various possible scenarios when it comes to executing contractual succession. This is both because of the different application of contract regulations between one set of conditions and another, and because of the presence, in the second case, of a subject other than the State Administration, with their own legal personality and with a legal, financial and budgetary regime that is also different. In effect, within the bodies of the public State sector, it will also be necessary to make a distinction between the bodies that fall within the category of public Administration for the purposes of Spanish contract legislation and the bodies that do not.

With respect to the companies awarded the contracts, we also often find that, as well as the basic case of a single contracted company, there are other contracts executed by temporary associations of companies, with the particular features of the concession companies, and the common practice of subcontracting to other companies and the legal possibilities of the assignment of the contract.

In terms of the objective aspects of contracting, a distinction must be made between administrative contracts and private contracts with the Administration. In the former case, further distinction must be made between standard administrative contracts and special administrative contracts. The preparation, award, effect and termination of administrative contracts is subject to the LCSP and additionally by rest of the regulations of Administrative law and, in its absence, by the regulations of private law. The application of European legislation and the LCSP is more complete and clear when the contracts are subject to standardized regulation. This is the case of all collaboration contracts between the public and private sectors, and also in the case of all other standard administrative contracts, on the condition that they exceed certain economic thresholds and that the contracting body holds the status of the contracting authority. Private contracts include those by public sector entities, organisations and agencies that are not considered to be public Administrations, as well as contracts held by public Administrations with particular objects, such as certain financial services, artistic and literary creations and performances, certain show productions, subscriptions to regular publications and databases, and all contracts other than the standard administrative contracts. In the case of drafting and awarding these contracts, the same regime will apply as in these last cases, but their effects and termination are governed by private law.

It should also be noted that the legal system applicable to the termination of contracts closed by the State and regulated by the LCSP varies considerably depending on the type of contract, as the termination of standard administrative contracts is principally governed by the LCSP, while special administrative contracts are governed by their own specific regulations and private contracts are subject to the regulations of private law.

However, these difficulties increase when we take into account the fact that not all contracts

are primarily governed by the LCSP. Therefore, it is necessary to take into consideration the regulations contained in Law 31/2007, dated 30th October, regarding contracting procedures in the water, energy, transport and postal service sectors, the object of which is the regulation of the contract award procedure for works, supplies and services in the case of contracts issued by certain public and private organisations determined in the same Law and which operate in the aforementioned sectors and when the value of these contracts exceeds the economic thresholds indicated by these and other contracts. Furthermore, it should be noted that the Law 24/2011, dated 1st August, regarding public sector contracts in the fields of defence and security and the rest of the areas defined in the LCSP as “transactions and contracts excluded” from its scope (Article 4), which include agreements of wills that are subject to analysis by other reports drafted by this Council (such as “the agreements that the State enters into with other States or with public international law bodies”) and other agreements which will require specific references (such as the inter-administration collaboration agreements and also the legal transactions by virtue of which the provision of a particular service is commissioned to an organisation classified as “a resource and a technical service of the Administration”).

Lastly, it should be underlined that the succession of an Administration with respect to the contracts entered into with another Administration is not set within a context of relatively stable situations and legal relations (such as the ownership of securities and real estate property or staff providing services to an Administration), but rather within a context of an extremely dynamic reality that lasts and evolves through time, perhaps several years, between the formalization of the contract, the execution of its effects and its termination. Moreover, contractual succession does not only need to take into account the lifetime of the contract (its duration, the specific phase it is currently in and the incidents that affect

its termination), but also the prior acts of drafting and awarding the contract. In addition, the legal relations beyond the termination of the contract must also be taken into consideration, besides the state of consequences that arise from the jurisdictional processes that have been undertaken to resolve disputes generated by the contracted parties.

All of these considerations highlight the need to be in possession of an inventory of the State’s contracts that affect Catalan territory, as well as the need to study each of the categories of contract that are identified, as well as the specific regime applicable to each of the contracts.

Meanwhile, the rights and obligations of a contractual nature fit without difficulty within the concepts of rights and obligations used by international regulators of the secession of States. The solution indicated - transferring the contracts of the predecessor State to the successor State- would also be underpinned by the principle of continuity of public services and, in general terms, by the principle of legal certainty and the protection of the general interests of both territorial collectives and the rights of legal and natural persons that have been awarded these contracts.

Automatic subrogation. In accordance with the aforementioned principles, the starting point for executing the succession of the State’s contracts must be the automatic subrogation of the rights and obligations of the State Administration in the respective contracts. This must include full recognition of the rights of the contractors to participate in the negotiation of the specific conditions of this subrogation and in the adoption of any corresponding adaptation clauses, as well as the right to indemnity for any damages that may be incurred as a result, on the condition that they can be duly accredited, in accordance with the agreements and commitments made. In the same respect, the Report 3/2014 of the Administrative Contracting Advisory Board of the Generalitat of Catalonia (Permanent Com-

mittee), dated 27th February, analyses the possibility of the subrogation of a public sector entity, organisation or body with respect to its status as the legal contracting authority of another public sector entity, organisation or body, in the case of contracts in force or signed by this body. It considers the transfer of the optional hearing of the contract in the case of the subrogation as a matter of law of a public sector entity, organisation or body with respect to its status as the legal contracting authority of another public sector entity, organisation or body. This subrogation, for the purposes of our current interests, could be assimilated within the subrogation derived from the success of States in a contract.

Based on these starting principles and rules (automatic and general subrogation with respect to the rights acquired by contractors, legal standing and hearing of the contractors in terms of setting the conditions of the subrogation as necessary and, if required,

indemnity for the accredited damages and losses incurred), it is necessary to consider the general regime of each category of affected contracts, as well as the specific characteristics and clauses of the contracts in force and, in particular, the contracts that involve the greatest legal and financial complexity. Based on the result of this individualized assessment, within the scope of the freedom of contract between the predecessor State and the successor State, in accordance with the principle of protecting the rights and interests of the contractors and taking into account the powers that contract law recognises for the affected parties, there should not be any obstacles to excluding certain contracts from the regulation of the automatic subrogation, which would enable other solutions to be selected, such as early termination of the contract or the reclamation of the contracted work or services by the successor State in accordance with the regulations of predecessor State.

1.6 The distribution of assets and liabilities with the Spanish State

There is a set of assets and rights that the Spanish State would have to transfer to the new State, as well as a set of liabilities and obligations that the new State will have to undertake. However, in relation to the succession of States, this issue is not strongly regulated from the perspective of international law. There are few regulations that are legally binding and there are hardly any treaties in place. The small number that do exist have been ratified by few countries.

It must therefore be accepted that, when executing this distribution of assets and liabilities with the Spanish State, it is the will of the two States involved that prevails, as well as the will of the creditors and the international economic and monetary authorities. All of this is based on the fact that there are international regulations, principles and customs that are of great value in terms of providing guidance throughout these negotiations.

1.6.1 The legal framework

The International Law Commission of the United Nations has undertaken various codification projects related to the succession of States. Nevertheless, the United Nations Assembly has only adopted two of these projects as international codification treaties. The first of these is the 1978 Vienna Convention on the succession of States with respect to international treaties. The second is the 1983 Vienna Convention on the distribution of the State's assets, liabilities and records in the event of the succession of States. Technically, only the first of these conventions took effect. However, given the low number of ratifications obtained, the legal force of these treaties is disputed by the majority of the doctrine. Meanwhile, the

1983 Vienna Convention, which regulates the distribution of the State's assets and liabilities, never came into force.

However, the lack of validity of the 1983 Vienna Convention does not prevent the parties involved in a particular dispute from voluntarily agreeing to apply the Convention (in whole or in part) to resolve their specific case. Alternatively, they could use the Convention as a model. It is important to take into consideration the fact that the dissolution of the former Soviet Union, Czechoslovakia and Yugoslavia has, in practice, contributed to the consolidation of some of the regulations established in this Convention.

The majority of its regulations are default rules and, as such, they are not legally binding and it is therefore possible to enter into a contrary agreement. In fact, in the case of succession of States, the will of the parties prevails. As such, the provisions of the 1983 Vienna Convention can be applied in all areas in which an agreement has not been reached.

Within the legal framework of the successions of States, the resolution 'Guiding principles relating to the succession of States in respect to property and debts' adopted by the Institute of International Law in 2001 in its session in Vancouver. The importance of this document is rooted in the fact that the doctrine compiles all of the international practices employed during the 1990s in the cases of succession of States that took place in Central and Eastern Europe. As such, in practice, it consolidates many of the provisions of the 1983 Vienna Convention.

Therefore, in terms of the mechanisms and the framework for the negotiations, an initial ap-

proach could involve a negotiation of assets and liabilities prior to the date that the secession takes effect, rather than a negotiation subsequent to secession. In the former case, the negotiations would be concluded within the Spanish legal and political framework, as the parties would agree to use the international legal framework and the recognition of the secession would be conditional on an agreement being achieved between the parties. As well as political stability, the negotiation of assets and liabilities prior to secession would ensure greater legal certainty throughout the process and would neutralize the potential consequences of the process on international markets.

The distribution of assets and liabilities subsequent to the date on which secession takes effect may generate a level of uncertainty on international markets. Nevertheless, negotiations subsequent to secession could be overseen by international mediators in accordance with the international that applies in the field. Reaching an agreement in terms of the distribution of the State's property and debts within the international framework has certain advantages that must also be evaluated. These include the fact that the agreement would have to be ratified using a treaty instrument, meaning that it would have the status of an international treaty. Firstly, this would mean that non-compliance with the treaty would result in international liability for the party in breach. Secondly, it would grant the ability to annul the agreements in the event of threats and coercion by one of the States, as established in the 1969 Vienna Convention on International Treaty Law.

The international legal framework route is the option that is being taken into account in this case, in light of the expected difficulty to be able to negotiate before secession and in view of the fact that the majority of the negotiations regarding the distribution of assets and liabilities in the case of the succession of the State would take place on an international level.

In practice, the negotiations are resolved on various fronts between: predecessor State, the successor State, the international monetary authorities (the International Monetary Fund, the World Bank), the European Union, for example, through the Central European Bank, and certain agencies that represent the interests of the creditors. These agencies are grouped in the Paris Club and London Club, as they are known, according to the public or private nature of the loans.

There are normally two negotiation processes that run in parallel. The first takes place within the framework of the Paris Club. This is not an international organisation, but rather an informal forum in which the creditor States are represented with the aim of renegotiating the conditions of the debt at payment with the debtors. The decisions are taken by consensus. The second line of negotiations takes place within the framework of the London Club. As in the previous case, neither is this an international organisation, but rather a forum that brings together the creditor financial institutions of the States' debt. At the Club, negotiations are held with respect to the transfer of public debt with private institutions, primarily belonging to the banking system.

The entire process has to be based on a set of clear principles, as listed below:

- *Principle of proportionality.* An equitable distribution may be based on the demographic weighting of the seceding territory as a proportion of the whole territory of the original state, with the aim of ensuring that some citizens do not bear more of the debt than others. In international practice, other parameters have also been used, such as economic weighting in terms of GDP of the seceding territory with respect to the whole State's GDP. Other criteria to be taken into consideration include the proportion of central government expenditure in the seceding territory with respect to the original State as a whole.
- *Principle of equity.* This refers to the need to maintain consistency in the balance be-

tween the distribution of assets and the distribution of liabilities between the two States. Therefore, by undertaking part of the Spanish State's debt, Catalonia would be entitled to the equivalent positive balance: a) the transfer of assets associated to the debt undertaken by Catalonia; b) the transfer of an equivalent part of the State's assets that are not subject to the ascription to a particular territory.

- *Principle of territoriality.* The Catalan State would have to assume the debt of the Generalitat of Catalonia and its city councils, but it would not have to assume the debt of territorial bodies outside its territory.
- *Principle of transparency.* This principle, contained in Article 2 of the United Nations Charter, is considered by the entire doctrine to be a structural principle of international law. It implies the acceptance of the negotiating process, the will to reach an agreement and the commitment to comply with the agreement.

Another issue to be resolved in that the 1983 Vienna Convention does not establish any criteria for determining the effective date of succession. The contemporary international practices vary greatly. In some cases, the date used is the date on which the predecessor State stops perform sovereign functions in the territory of the seceding State. In other cases, the date of the declaration of independence is used as the effective date of succession. Other cases have used the date on which the new Constitution is adopted or the date on which the results of the referendum for self-determination were published (Bosnia, 2nd March 1992). Meanwhile, in other cases, the effective date of succession is taken to be the date on which the authorities of the seceding territory stop contributing to the State treasury, or the date on which the independence of the new State is formally recognized by the predecessor State. In some more complex cases, the succession of States is considered to take place over a certain period of time. In any case, the effective date of succession has to

be adopted by consensus between the parties and the mediators.

1.6.2 Public debt and obligations of the State

When planning a process of distribution of assets and liabilities between two States, the distribution of the public debt and liabilities of the State obviously take on a particular significance. As well as the economic and financial consequences of this distribution for both States, the international implications that derive from this process must also be considered.

Public debt can be seen as all of the debt contracted by any public authority from any public or private, legal or natural person. In this respect, a distinction can be made between local debt and central government debt.

With respect to local debt, the Catalan state would only have to assume the debt of the Generalitat, provincial councils, county councils, metropolitan entities and town and city councils in Catalonia.

In terms of the public debt of the central Government, it can be divided into debt that can be ascribed to a particular territory and debt that cannot. The debt that can be ascribed to a particular territory is the debt contracted by the central Government or by any of its agencies in charge of the general State budgets, for conducting work projects, services and investments in a specific territory of the State. In principle, the debt contracted by the Spanish State that is attributable to a particular territory for work projects and investments outside of Catalan territory cannot be transferred to the Catalan State.

However, a distinction is required between the debt contracted to make the investment possible and the debts or liabilities contracted by the managing body of each infrastructure with respect to its suppliers and employees. In the former case, the debt associated with these

investments can only be considered attributable to the predecessor State, although the debt with respect to suppliers and the contractual obligations associated with the management and exploitation of each infrastructure may be attributed to the successor State.

The debt that cannot be ascribed to a particular territory is all debt that is not attributable to a specific territory. This debt arises from satisfying the State's needs for general services. In other words, this debt is contracted to provide common services to all Spanish citizens, such as the debts incurred by the Ministries of Defence, Foreign Affairs and Justice, for instance.

In the case of debt that is not attributable to a particular territory, it will therefore be necessary to negotiate the applicable criteria for proportionality in advance. The demographic criterion would be the most equitable way to distribute the liabilities among the citizens of all of the territories. Nevertheless, this could be weighted according to elements with economic weighting or proportion of the prior expenditure and investment of the State. In any case, proportionality does not effect the State as a whole, but rather only the debt entries contracted by the central State Administration that is not attributable to a territory.

The distribution of debt not attributable to a territory has various balancing items. Firstly, the transfer from the predecessor State to the successor State of all of the property and services linked to the debt assumed by the latter. In the event that the Spanish State did not want to transfer some of its assets (and until this transfer takes effect), the Catalan State would be under no obligation to assume its debt and the corresponding obligations. Secondly, as well as the transfer of the assets associated with the debt assumed by the Catalan State, the Spanish State would have to transfer to Catalonia a proportional part of its property and assets that cannot be attributed to a territory, in line with the same criteria agreed for the distribution of the debt.

With respect to the transfer of the predecessor State's debt with international organisations and despite the lack of regulation by international law, in principle, there would be no possibility of this debt being transferred to the Catalan State, at least until the new State were considered part of the organisation as a fully-fledged member. In addition, it would be necessary to consider the possibility of distinguishing between organisation's to which Catalonia would have direct admission and on other cases in which Catalonia will have to pass through the admissions process as an outsider State to gain admission. In the former case, a proportionality criterion could be applied by which the Catalan State would have to assume part of the Spanish State's debt with a certain organisation. In the latter case, if the non-seceding Spanish territories are considered to be the only heirs and upholders of the legal personality of the Spanish State, the Spanish State will have to assume the entire debt with each organisation.

Another part of the predecessor State's debt that may be included in the negotiations is the debt contracted by the central Government with the Generalitat of Catalonia. In a scenario in which the Spanish State does not fulfil its financial and investment commitments with Catalonia, especially once the process of secession is under way, whether this non-compliance is a means of economic coercion or a result of the Spain's economic situation, the Catalan State would have the legitimate right to demand a reduction of the debt of the Spanish State that it had to assume as a consequence of the succession of States in an equivalent quantity.

In terms of debts with suppliers, in principle, each State would have to assume the debts contracted by corporations (RTVE, ADIF, AENA, etc.) with suppliers in a way that is equitable with the assumption of ownership and assets.

1.6.3 Assets and rights of the State

The distribution of the State's assets and rights is another fundamental process that must be undertaken when executing the distribution of assets and liabilities between two States. This is a highly delicate process that is also extremely visible, as it affects public real estate and services that are widely used by the general public, for example.

As in the case of debt, a distinction can be made between assets that can be attributed to a territory and assets that cannot. In the former case, it should be noted that the public property located in the seceding territory are transferred to the successor State directly and without considerations, as established in Article 2.2.a of the 1983 Vienna Convention. Although not specified by the Convention, this includes all types of State assets and property, such as buildings, services and public corporations.

Property that cannot be attributed to a territory included all of the assets and resources of entities that are common to all Spaniards (the Bank of Spain's reserves, current accounts, ownership of public and private companies, national heritage, etc.). In principle, they would have to be transferred in the same proportion established for transfer of debt not attributable to a territory, as established in the principle of equity mentioned at the start of this report. If this were not the case, other corresponding considerations could be demanded.

Extra-territory assets include both public property located in third party States (embassies, consulates, offices of public institutions and agencies, military and scientific bases, oil platforms and other structures located at sea, etc.) and assets in extraterrestrial locations, such as artificial satellites and space installations. Some of the doctrine considers that extra-territorial assets should be distributed equitably between the predecessor State and

the successor State. In any case, the distribution must be favourably agreed by the State in which the predecessor State's asset subject to transfer to the successor State is located.

Current accounts and other financial instruments (the Spanish State currently has 4,823 current accounts in different banking institutions around the world. 423 in the Bank of Spain, 3,163 in Spanish banking institutions and 1,237 in foreign institutions) can be classified as State assets not attributable to a territory. As such, they would have to be transferred in accordance with the proportionality criteria in a way that is equitable with the transfer of State debt not attributable to a territory. However, the current accounts of some public entities belong to the territory's public Administration institutions, such as provincial councils, and these may be considered attributable to a territory, as they are dependent on a territorial public institution and are subject to needs related to a certain territory.

Spain's position as an international creditor with respect to third-party countries may also be the object of distribution in the event of a succession of States. In other words, the parties could distribute the public debt contracted with Spain by other subjects of International Law. In such a case, this would not be considered an asset not attributable to a territory, as it is a financial right. Therefore, it would be possible to opt for the same proportionality used to determine the distribution of the State's debt not attributable to a territory.

1.6.4 Historical, artistic and cultural heritage

The transfer of the State's assets in cases of the succession of States also includes archives, cultural assets and national heritage. In principle, the predecessor State has to transfer the following elements to the successor States: a) archives that belong to the seceding territory; b) archives that make explicit reference to the territory, its history or population; c) archives

required for the territory's institutions and public services to operate properly; and d) the archives and document repositories with national co-authorship with the successor State. This includes all types of tax authority databases regarding taxpayers, electoral censuses, civil register, criminal conviction register, hospital, police, Social Security and transport archives, document repositories, historical archives, open files pending administrative ruling, etc. In principle, the transfer of archives must not involve any equivalent consideration in return.

The distribution of national heritage is also negotiated. This includes property of national interest, moveable assets registered on inventories and all other Spanish heritage, including all moveable and real estate assets of artistic, historical, paleontological, archaeological, ethnographic, scientific and technical interest that are not registered on a general inventory. In accordance with the provisions of Articles 28.7, 30.3 and 30.4 of the 1983 Vienna Convention, in principal, the transfer of cultural property and national heritage must be governed by the historical contribution of each territory to the predecessor State. However, as in the case of the State archives, other criteria may also be applied, such as the origin of the artist and the most explicit reference of their work.

1.6.5 Natural resources

Another crucial aspect of any process of distribution of assets and liabilities between two States is the separation of natural resources. This is particularly important with respect to water resources, but also in relation to air-

space and radio-electric space, which involve consequences for public telecommunications services, for instance.

In the case of water resources, a distinction should be made between border watercourses and successive watercourses. No party can claim exclusive sovereignty of shared hydraulic and energy resources. Nevertheless, it should be clarified that joint management does not affect only the part of the hydrographic basin of the seceding territory, but rather entire hydrographic basin of shared bodies of water (such as the Ebro River). Joint management may be conducted through the creation of bilateral river committees.

The successor State automatically inherits all of the sovereign rights over areas with maritime sovereignty, without any equivalent consideration in return: inland waterways, territorial seas, the exclusive economic zone, sea beds, etc., as well as sovereign rights over adjacent airspace and radio-electric space in the vertical plane. This also involves inheriting the obligations that the State with territorial sovereignty has in relation to these spaces 1982 Montego Bay United Nations Convention on the Law of the Sea.

1.6.6 Private property and debts

Normally, outside of the scope of decolonization, the contractual obligations of the predecessor State and private organisations regarding the assignment and exploitation of resources of the successor State are compulsorily transferred.

1.7 Quantitative variation in the budgets of the Generalitat, after the new Catalan State is achieved

The independence of Catalonia would have significant effects on the budget of the Generalitat. This would primarily be because the Generalitat would have to assume new competences, create State structures that do not currently exist and reinforce the current administrative structures. All of this will involve more public spending. Secondly, the budget would also be modified in terms of revenues, as tax revenues would increase due to the fact that the contribution that Catalans currently make to the Spain would remain in Catalonia.

One way of quantifying these additional expenses and revenues would involve using the information regarding the tax balance sheet of Catalonia with the central public sector authorities that is regularly calculated by the Government of the Generalitat. In one respect, the tax balance sheet quantifies the expenditure that the Spanish State undertakes in Catalonia corresponding to the competences of the central authorities, such as the administration of Social Security (payment of pensions and unemployment benefit, among others) or foreign affairs, which the new State will have to assume. As such, these figures can be used as an indicator of the new competences assumed by the seceding State. In another respect, the tax balance sheet also indicates the tax revenue that Catalonia would have as a State, on the condition that a part did not revert to the Spanish State.

While using the tax balance sheet is a relatively simple method of ascertaining the additional expenditure and revenue that would form part of the Generalitat budget in the event of an independent Catalonia, the adoption of this method has the following drawbacks: a) it is based on the assumption that the new pub-

lic services that must assumed by the Catalan State will be maintained with the same level of expenditure currently allocated by the Spain; b) the quantification of the additional public expenditure will vary depending on the year and the States economic policy; c) it assumes that the same fiscal system and level of tax burden will be maintained in line with those that currently exist in the Spanish State.

The quantification is made with reference to 2011, as the reports of the tax balance sheet of Catalonia with the central public sector are currently only available until that year. As mentioned, the analysis conducted is based on the information provided in the aforementioned reports.

In this way, the calculation being made here is equivalent to quantifying the additional expenditure and revenue that the Generalitat budget would have had in 2011, had Catalonia been an independent State and: a) it had provided the new public services that it had assumed as a State at the same levels of public spending as the Spanish State did; b) it had imposed the same taxes and tax burden as the Spanish State did during the period under analysis.

1.7.1 Additional expenditure

In line with the methodology generally applied internationally, the tax balance sheet uses two approaches to quantify the public spending of the central public sector in Catalonia at a territorial level: the burden-benefit flow and the monetary flow approaches. The burden-benefit approach attributes the expenditure in the territory in which the beneficiary lives, regardless of where the public services is provided or where

the investment is made. In contrast, the monetary flow approach attributes the expenditure to the territory in which this expenditure takes place, regardless of the geographical location of the end beneficiaries of this decision.

Using the monetary flow method, with the exception of defence and foreign policy, in which cases the expenditure attributable to the territory is calculated by applying the burden-benefit approach and using the data from the budget settlements of the State, autonomous institutions, state agencies and public institutions, as well as the Social Security system and public corporations, the total additional expenditure that the Generalitat would have had to assume in 2011 if Catalonia had been an independent State is 39.507 billion euros. Three quarters of this expenditure (74.07%) correspond to the Social Security system and its economic benefits. In terms of quantity, the second most significant proportion of expenditure would be the transfers to local governments (6.38%), followed by debt interest repayments (6.07%). These three items alone account for 87% of the additional expenditure. These would be followed, in terms of monetary volume, by spending on defence (3.05%) on the assumption that the new State had armed forces and defence expenditure equivalent to Spain. The rest of the expenditure programmes and items are less significant in quantitative terms. It should be highlighted that the new State would not necessarily have to reach these levels of spending, as they correspond to the economic policy of the current Spanish Government. Nevertheless, this assumption is made to enable an approximate calculation of the volume of additional spending of the new State with respect to current public expenditure.

1.7.2 Additional revenues

If the independent Catalan State maintained the same fiscal system and tax burden that is currently applied in the territory as part of the Spanish State, the additional revenues that

the Generalitat would have would be the same as the tax revenue generated in Catalonia that currently end up in the Spanish treasury, minus the transfers received by the central public sector.

The two approaches for calculating the fiscal balances account for the tax revenues of the central public sector in Catalonia in different ways. The burden-benefit approach accounts for the revenues in the territory in which the taxpayers who eventually bear the burden live. The monetary flow method accounts for the revenues in the territory in which the economic capacity subject to the tax is located. In other words, this focuses on where the taxable object is located, regardless of where the taxpayers who eventually bear the burden live.

Accounting for the additional revenues that the Generalitat would have in the event of independence is based on the revenues recorded in the tax balance sheet in accordance with the monetary flow approach, as this is the best calculation of the tax revenues that could be generated in Catalonia in line with its levels of income, consumer spending and wealth. This is regardless of who eventually bears the tax burden and where the tax collection takes place.

The additional revenues that the Generalitat would have had in 2011 if it had been an independent State and had maintained the revenue structure, fiscal system and tax burden that the Spanish State has that year, the revenues would have been 45.317 billion euros, 54.29% of which correspond to the revenues from Social Security contributions and 41.49% from taxes. All other revenues are only of residual importance.

1.7.3 Fiscal surplus of the Generalitat

Once the additional public expenditure and revenue of an independent Catalonia have been quantified, the effects that independence would have on the Generalitat budget

can be analysed. It should be noted that the revenues are significantly higher than the expenditure accounted for, resulting in a fiscal surplus of 5.81 billion euros for the treasury of the Generalitat.

In fact, the previous fiscal surplus would have been even bigger, as it would have to take account of the benefit of no longer participating in the amortization of the debt that results from the Spanish budget deficit, which was significant in 2011, at 3.58% of GDP. In that year, the aforementioned benefit is estimated at about 7.184 billion euros which, added to the 5.81 billion mentioned above, would leave a fiscal surplus of 12.994 billion euros.

A further aspect to be taken into consideration is that an independent Catalonia would have to contribute to the international organisations of which it forms part (IMF, EU, etc.). The most significant of these in terms of quantity is the contribution to the EU, which is around 1.4 billion euros. Therefore, this contribution would have to be subtracted from the previous fiscal surplus, which would result in a fiscal surplus of 11.591 billion euros, which represents 5.95% of GDP.

Lastly, it should be noted that the previous fiscal surplus is a initial approximation of the situation in an independent Catalan State bearing in mind, as mentioned above, that the analysis is based on a set of faith restrictive assumptions. Despite these restrictions, the analysis conducted here may be a reasonable approximation of the fiscal surplus that would result from the independence of Catalonia for the Tax Administration of the Generalitat. In addition, if the new revenues and expenditure analysed were added to the budget of the Generalitat, it is clear that this budget, which is currently in deficit, would shift into surplus.

1.7.4 Considerations for the first few months

The analysis conducted so far has highlighted the fact that the Generalitat would be

completely viable after the independence of Catalonia in fiscal and financial terms, despite having to assume new competences, some of which are of such a significant scale as the Social Security system. However, this viability has been analysed from the perspective of a scenario in which Catalonia has become a fully independent State. In other words, the analysis is set within a context at the end of the independence process, in which the Generalitat would already have fully assumed all of the competences and obligations of a State, with the corresponding provision of public services, and its tax agency would have fully implemented its tax collection functions.

Forecasts should also be made for the financing of the Generalitat in the initial period of independence. In this respect, it is important to take into account the circumstances in which this independence takes place. If independence were achieved after an agreement with Spain, there would be no problem with respect to financing the Generalitat in the early stages of independence, as the new competences that would have to be assumed would be accompanied by the corresponding resources from the Spanish State tax revenue currently collected in Catalonia, which would be transferred to the new State.

The situation may be different if Catalan independence were achieved without the agreement of Spain and a belligerent position were adopted by the Spanish State. In such circumstances, the financing of the Generalitat in the first few months of independence must be taken into consideration, as the new State's tax agency may not yet have achieved full performance in terms of tax collection.

It has been estimated that, during the first few months of independence without agreement from Spain, the Government of the Generalitat would need monthly financing of 4.5-5 billion euros, which would be required to pay the salaries of civil servants, pensions, unemployment benefit and the current spending of the Generalitat.

As such, there may be a brief interim period in which the Generalitat would have to resort to other non-taxation sources of financing to cover this expenditure. The possible alternative channels for financing the Generalitat are as follows:

- Taking out loans with Catalan or foreign financial institutions. Catalonia would be a State with relatively few debts as, without having reached an agreement with the Spanish State, the new State would not have assumed part of the predecessor State's debt. As a consequence, the Generalitat would be in a good position to obtain foreign financing. As such, loans could be taken out using the new State's assets (ports, real estate, airports, etc.) as collateral.

- Public debt issues by the Central Bank of Catalonia.
- Issuing bonds for public subscription.
- Issuing tradable bonds for outstanding payable taxes with the aim of advancing the fiscal resources of the Catalan citizens.

In any case, it should be highlighted that the basic source of financing has to come from taxation resources, and any alternative sources of financing must be temporary in nature and be applied for a brief period. As such, it is crucial that the Government of the Generalitat implements the strategies and measures required to prepare the Catalan Tax Agency during the period of transition so that, in a context of tax sovereignty, this Administration can operate at full capacity as soon as possible.

2 The organisation of Catalonia as a new State

2.1 Economics and Finance

2.1.1 Fiscal and financial viability

The independence of Catalonia, in addition to representing the disappearance of the fiscal deficit (8% of Catalan GDP on average, about 16 billion euros), would result in a clear benefit for the Generalitat (Government of Catalonia), which would have additional resources each year (fiscal gain) of about 6% of Catalan GDP. This would have additional effects on the economy that should not be underestimated. These effects would be caused by the impact of the fiscal gain and also the additional costs which the Generalitat would incur.

In economic terms, an increase in consumption (private and public), investment or public spending is regarded as a boost to GDP, which is known as the multiplier effect.

Thus the fiscal gain of independence might have a significant multiplier effect on the Catalan economy, as resources from it could be used for public spending increases and/or tax cuts. This would have an immediate positive effect on consumption and investment. Furthermore, the rise in public spending might lead to an increase in the number of public employees, which would boost the employment rate.

In addition to the effect of the fiscal gain, the very impact of the additional spending that the Catalan Government would experience would also most likely have a positive effect on the economy. This impact would not be seen in spending on transfers to specific groups, since in this case there would only be a change in the payer government. However, setting up new state structures such as a central bank or regulatory bodies could have a positive effect on highly qualified employment.

Moreover, the impact of these effects on the Catalan economy, thanks to the creation of employment and business activity would also have a positive impact on tax revenue. For example, the increase in employment would increase revenue from personal income tax as more people would be earning and also from VAT due to the fact of increased consumer spending. Current estimates in Spain indicate that an increase of 1% of GDP results in an increase in tax revenues by around 1.2%.

In addition to the above economic impact, the new state would also gain by being able to decide its economic policies and tailor them to the country's needs. This is an intangible benefit that would have a positive bearing on economic growth. The fact that an independent Catalonia could map out its own policies (tax, labour, finance, infrastructure, education, etc.) would have a direct impact on Catalan GDP.

2.1.2 Monetary policy. The euro

One of the main powers and responsibilities of a sovereign state is establishing and managing a monetary system. This includes the determination of the currency to be used as a means of payment and unit of account, as well as the definition of monetary policy and its implementation.

In this field, a possible independent Catalan state would have two main options: to have its own monetary system or keep the euro as a currency.

The value of keeping the euro as a common use currency in a possible independent Catalan state is obvious. It would be an option

even though the new state would be outside the Eurosystem and/or the Eurozone. In this scenario, we must reiterate our preference for achieving a monetary agreement. And if no agreement is reached, the euro would have to be adopted by unilateral adoption. It is important here to express the will to fulfill all the requirements established by the EU, while keeping in mind that keeping the euro gives legal certainty to companies' business transactions.

We must distinguish between two possible scenarios if the euro were kept as Catalonia's currency.

In the first scenario, Catalonia would be in the Eurozone as a full member of the Eurosystem (the nineteenth), with the possibility of representation in the Governing Council of the European Central Bank (ECB). This option would undoubtedly be the most desirable, as it would ensure full continuity of the current system from the citizens' point of view. It would also give Catalonia its own voice in European monetary organisations, and eligible for seigniorage revenue from the ECB (although these revenues currently account for a very small percentage of GDP). The main requirement for this option is to stay in the EU, or an *ad hoc* temporary agreement while Catalonia joins the EU, a fact which would make it possible.

In a second scenario of not remaining in the EU, Catalonia could keep the euro as its official currency but without being a member of the Eurosystem. In comparison with the previous scenario, this would have the following main drawbacks:

- The lack of Catalan representation in the governing bodies of the ECB and its seigniorage revenue. This is a minor issue in substantive terms.
- Banks based in Catalonia would not have direct access to ECB credit, since it is restricted to banks within the Eurozone.
- Financial assets issued in Catalonia (including the debt of the new state) could

not be used as collateral (bank guarantee) for ECB loans.

The difficulties associated with the last two points are certainly relevant and could be overcome with a monetary agreement with the EU similar to that signed with Monaco and Andorra, which might approve the use of the euro as the official currency for the country and allow Catalan institutions access to ECB operations. This Council decision should be taken by qualified majority. It would be a natural choice to ensure the continuity of the current monetary framework and allow a "soft" and fast (re)entry as a full member of the Eurosystem. It is also – by far – the most likely scenario in the event that an independent Catalonia remained outside the EU, since otherwise it would be detrimental to all parties involved in relevant decisions. In any case, the absence of an agreement would not prevent Catalan banks from accessing the European Central Bank through their subsidiaries.

2.1.3 Bank of Catalonia, the country's own central bank

Whatever the scenario, a new national central bank – a Bank of Catalonia (BdC) – would be necessary, equipped with the powers common to central banks. This would also present a great opportunity to carry out these functions better than the Bank of Spain (BdE) has in the past. The implementation of single European oversight mechanisms could partially facilitate this function.

It is worth repeating that Catalonia's strong commitment to Europe involves its willingness to follow demands issued by the EU, especially considering that it will know how to sufficiently gauge the consequences of the two decisions in ensuring the common space, respect for commitments to citizens and creditor guarantees for the Kingdom of Spain. The EU itself can thus be expected to favour an agreement. This would be the case not only

for consistency with the principles of European integration, as analysed in this Council's report on the paths for Catalonia's integration in the European Union, but also because a strategy contrary to the agreement could end up affecting Spain and the Spanish economy as a whole, since the solvency of its debt would be weakened sharply and could eventually end up undermining the credibility of the common currency itself.

An independent bank. The Bank of Catalonia should be independent. This independence implies that neither the BdC as an institution or any member of their decision-making bodies would be allowed to seek or accept instructions from the Government or from any other agency with respect to how they should exercise the functions and achieve the goals with which they have been commissioned. Institutions, agencies and the Spanish Government should respect this principle and not to try to influence the members of the BdC's decision-making bodies.

The financial accounts of the BdC should remain separate from Spain's. The BdC should have its own budget.

The BdC Statutes should stipulate that its governor and directors should have a relatively long term – of eight or nine years – without the possibility of being re-elected. They should only be removed from office in case of incapacity or serious misconduct.

The BdC's Executive Committee should be made up of the Governor, the General Managers and the General Secretary. Temporarily, and until Catalan legislation adopts the final resolutions about this matter, the appointment of the BdC's governing bodies could follow the current model of the Bank of Spain, except it would be the Generalitat's responsibility. This body should be in charge of the daily government of the BdC, prepare the meetings of the Governing Council and exercise the powers delegated to it by the Governing Council.

The Governing Council would be the highest decision-making body of the BdC. It should comprise the members of the Executive Committee of the BdC, along with its directors. This body should adopt the general lines of action and take the necessary decisions to ensure the effective exercise of the functions assigned to the BdC.

The duties to be assumed by the BdC are crucial for the economy and financial stability. Five of its duties are worth highlighting: supervising the banking system; promoting financial stability; defining and implementing monetary policy; promoting the smooth operation of payment systems, owning and managing the state's foreign exchange reserves; and issuing and putting into circulation legal tender banknotes and coins.

It could also provide other services, such as preparing and publishing statistics related to their duties, providing treasury and financial agent services regarding public debt and advising the Government, and carry out applicable studies and reports.

Clearly, these functions would be carried out differently if Catalonia were part of the EU or otherwise, and therefore if the BdC were integrated into the ESCB (European System of Central Banks) or not.

Supervision. The BdC should supervise banks' solvency and compliance with specific regulations. The new ECB-dependent European supervisor (Single Supervisory Mechanism, SSM) will supervise the large banks (mainly those with assets exceeding 30 billion euros and in any case the three biggest banks) of each Eurozone member state (and other countries subject to the SSM). The BdC, as an NCA (National Competent Authority) should work closely, pursuant to SSM regulation, in monitoring these large banks. In addition, the BdC should directly supervise other Catalan entities that may not be significant at the European level.

Financial stability. The BdC should promote financial stability, ensuring the smooth operation of financial institutions, strengthening its resilience against adverse economic conditions and harmonising its efforts with the general and specific interests of companies and individuals. To this end:

- It should adopt a prudent and effective regulation. This would be sufficiently ensured with the direct transposition and application of European directives and banking regulations and harmonised prudential rules issued by the European Banking Authority (EBA) in the so-called Single Rulebook.
- It should exercise an active, macroprudential policy, always keeping an eye on macroeconomic variables that could affect the whole or part of the financial system, adopting measures to minimize these risks.

Monetary policy. The Eurosystem's primary objective is to maintain price stability. To achieve this objective, the Eurosystem manages monetary policy accordingly. Through a series of instruments and procedures that constitute the operational framework, it tries to control the interest rate and amount of money in the market.

Monetary policy decisions are taken by the Governing Council of the European Central Bank (ECB), and the national central banks of the Eurozone countries carry them out. The BdC should therefore carry out this function as soon as Catalonia joins the Eurozone.

The ECB's monetary policy is implemented with uniform criteria valid for everyone through three mechanisms which would be executed through the BdC and which are available on equal terms to all Eurozone financial institutions:

- Open market operations. They allow controlling interest rates, managing the liquidity situation in the market and steering monetary policy.
- Standing facilities. Its purpose is to pro-

vide and absorb liquidity and control interest rates in the market on a day-to-day basis.

- Maintain minimum reserves. Applies to financial institutions in the Eurozone. Its purpose is to stabilise money market interest rates and create (or increase) the liquidity structural deficit.

In accordance with the Statutes of the European System of Central Banks (ESCB) and with respect to all liquidity injection operations, the European Central Bank (ECB) and national central banks should require collateral provided by the counterparties, i.e., banks. This requirement is intended to protect the Eurosystem from potential financial risks. Collaterals are the financial instruments put forward as guarantee for repayment of a loan or sold as part of a temporary assignment. It would be the BdC's function to analyse and approve, in accordance with ECB rules, the eligibility of collateral presented by banks.

Payment systems. Security settlement and payment systems represent the infrastructure through which an economy's assets are mobilised. Consequently, the proper functioning of settling systems is essential for financial stability. Therefore, promoting the smooth operation of payment systems should be one of the BdC's basic functions.

Catalonia should likewise request membership in the Single Euro Payment Area (SEPA). This is an initiative of the European financial industry, under the leadership of the European Commission and the ECB, coordinated by the European Payments Council, and constituted by the EU countries plus Iceland, Norway, Liechtenstein and Switzerland.

2.1.4 The Catalan Investments and Markets Authority

The new Catalan State would need its own agency responsible for regulation and supervision of financial investments and the stock market, both for the importance of maintaining

regulatory safety in this area and because of the stipulations of the EC's Directive 2010/78. The objectives of this agency would be to ensure market transparency and proper pricing, as well as investor protection.

The Catalan Investments and Markets Authority (ACIM) would be the agency to take responsibility for the regulation and supervision of investments and financial markets. The ACIM should implement policies spelled out by ESMA (European Securities and Markets Authority).

The ACIM should be independent. This independence implies that neither the ACIM nor any member of its decision-making bodies should be allowed to seek or accept instructions from the State Government or any other agency.

ACIM should also have budgetary and financial independence and be financed exclusively from taxes received from financial market players.

The ACIM statutes should stipulate that the president and directors of the Catalan Authority should have a relatively long term – of eight or nine years – without the possibility of being re-elected. They should only be removed from office in case of incapacity or serious misconduct.

The functions which should be exercised by ACIM are essential for the proper operation of financial markets. Its tasks would include the regulation and supervision of financial markets and the promotion of the smooth operation of these markets. It could also carry out other functions required by the EU, such as the management of an officially recognised investor compensation system or encoding of securities and custody of securities for management and liquidation. It could also provide other services, such as preparing and publishing statistics related to its duties, advising the Government and carrying out applicable studies and reports.

2.1.5 The Tax Administration

Becoming a state is not possible without having the power to manage taxes paid by citizens. The Generalitat Government has to be able to decide its tax model and set the course of the fiscal policy that best suits Catalonia. In contrast with the Spanish model, the Catalan fiscal management model should foster cooperation between the public and private sectors to encourage voluntary taxpayer compliance with tax obligations.

The Tax Agency of Catalonia, then, should be the centrepiece of the institutional structure of the Catalan State's Tax Administration.

To become a public authority for a tax management model based on trust and cooperation with all taxpayers, the tax authority of Catalonia should exhibit the principles of transparency, professionalism, commitment to public service and efficiency.

The Tax Agency of Catalonia will be responsible for applying the tax system through the exercise of administrative powers and functions related to settlement, collection and verification of taxpayers' tax obligations subject to the tax jurisdiction of the Generalitat of Catalonia, and, if necessary, penalise any irregularities that may occur.

Public agencies which, together with the Tax Agency of Catalonia, would flesh out the institutional structure of the Catalan State Tax Administration are the Fiscal Council of Catalonia, the Institute of Tax Studies of Catalonia, the Directorate-General for Taxation and the Board of Taxation of Catalonia.

The Fiscal Council of Catalonia is the body that would facilitate an ongoing dialogue between the tax authorities and organisations representing various groups of tax advice professionals.

The Institute of Tax Studies of Catalonia would be the body responsible for the technical training of staff working in tax administration bodies.

The Directorate General of Taxation shall be the body that provides the criteria for interpreting tax regulations for governing bodies responsible for the application of taxes in order to achieve uniformity in the legal treatment of the various issues raised by Catalan taxpayers.

The Board of Taxation in Catalonia should group in a single authority all review proceedings through administrative channels of tax proceedings issued by various bodies and agencies part of the Tax Administration of Catalonia.

Objectives and characteristics of the future organisation of tax application functions.

In a tax management system based on self-payment, the taxpayer assumes the burden of performing all technical and legal tasks required for determining tax liability. If a high percentage of voluntary compliance is to be achieved, in addition to simplifying tax rules, the Tax Administration should provide taxpayers with technological tools and tax support and mentoring services to enable them to duly meet legally enforced tax obligations.

In Catalonia, there are already different branch networks which can offer support to all Catalan taxpayers, although each is part of a separate institutional structure. Along with public offices, the development of the future Catalan Tax Administration should include Property Records offices and the offices of the Chambers of Commerce, Industry and Navigation. In Catalonia's future Tax Administration model, the ATC and AEAT (Inland Revenue) offices would be integrated and coordinated with other public office networks (especially provincial councils), always respecting the powers and functions of each. Likewise, to improve the results of ordinary tax management without incurring excessive administrative costs, the cooperation of all fiscal intermediaries will be required.

To organise the collection of payments made by Catalan taxpayers in the voluntary pay-

ment window, in the medium term, it seems essential to redirect tax cash flow tax to the Central Bank of Catalonia. Meanwhile, this function could be organised by the various private banks operating in Catalonia as partners in collecting Generalitat taxes.

From an administrative standpoint, organising tax collection services requires having an office network where the various possible incidents may be resolved. To organise collection of unpaid tax debts, asset information about Catalan taxpayers should be available, as well as the organisation necessary to manage a large volume of cases where a lot of issues arise which require decisions to be taken by a public authority, and which often involve legal proceedings. The personal, material and technological means available today in Catalonia, especially those integrated in the autonomous bodies of provincial agencies, could be sufficient to address the management of executive collection of tax debts from Catalan taxpayers.

The administrative control of the correct fulfilment of tax obligations is a verification and testing activity subsequent to decisions taken by taxpayers at the time of carrying out their tax obligations. Therefore, given the volume of tax returns that have to be checked each fiscal year, the use of technologies for analysis and data cross-referencing is intensive. According to the tax control model of the Spanish state, the AEAT carries out this task distinguishing: a) on the one hand, mass (or comprehensive) checking by tax administration bodies; and b) on the other, the specific (or intensive) checking carried out by tax inspection bodies. This model of organisation with respect to monitoring compliance is valid, and addresses the various possibilities of combining human and technological resources according to taxpayer characteristics or the objectives of the public action.

Finally, it should be noted that the discovery of undeclared economic activities (underground economy) is a function that requires the use of

research techniques and people and capital tracking. Achieving the co-operation of international tax authorities and domestic economic operators (especially financial institutions) are therefore essential aspects for ensuring effective tax investigation.

The IT structure. In the 21st century, the key factor of taxing capabilities is information.

For this reason, the Tax Administration of Catalonia should have the necessary technological tools to develop an electronic management of tax application procedures.

The main shortcoming of the Tax Administration of Catalonia is that it lacks its own database of tax information, and the hardest challenge is to obtain it without co-operation from the Spanish government. The main requirements for the construction of this database are three-fold: obtaining tax data from Catalan taxpayers, the storage system and, finally, the protection of data to ensure confidentiality.

One might consider the possibility of taking advantage of the IT system which the ATC currently uses (GAUDI), although upgraded and improved, as a practical means for processing the various tax application procedures. However, in any case, the suitability of implementing an alternative IT system needs to be assessed.

From the taxpayer's perspective, the main channel for modern tax management is what is known as an online platform, understood as a site featuring all tax-related procedures and formalities to facilitate the remote interaction between the tax administration and taxpayers.

Estimated operating costs. According to the average cost of tax collection in OECD countries, for a potential 70 billion euros (including social contributions), we could estimate that the Catalan tax system would cost 750 million euros. However, the goal of the future Tax Agency of Catalonia should be to reach the efficiency levels that would allow it to carry out its public functions in accordance with a

public spending budget of about 400 million euros.

Estimate of the economic performance of the Catalan tax system. If to calculate the Spanish taxes obtained from Catalonia we applied a rate of 20% to the gross taxes collected by the AEAT, we would discover that the financial flow which the Generalitat of Catalonia could manage would be between 40 and 50 billion euros per year. To this amount we would then need to add the taxes collected by the ATC and, if applicable, revenue from the management of Social Security contributions.

If we assume that Catalonia's gross domestic product (GDP) is about 200 billion per year, if we applied the average tax burden levied by Spain during the last five years, we would obtain tax revenue, from all sources (including social security contributions) of close to 70 billion euros per year.

If, instead of applying the Spanish rate we applied the average EU tax rate, the Generalitat of Catalonia would obtain an estimated revenue of about 80 billion euros.

Finally, if we applied the tax rate of the European countries with the highest taxes, we could conclude that the tax revenue limit for Catalonia would be close to 100 billion euros per year.

Tax Administration development stages. The first phase is preparation, which extends from the present moment to the constitution of the new state. At this stage, measures must be taken to strengthen the powers and resources of the Tax Agency of Catalonia, under the Spanish tax law framework, which may be valid for both a political independence situation as well as any other scenario that may involve an increase in self-government for Catalonia.

The second phase of the process for creating the Tax Administration of the Catalan state starts from the moment that the Generalitat of Catalonia achieves fiscal sovereignty. It will therefore be developed in accordance with

regulations approved by the Parliament of Catalonia. From the moment that the Parliament of Catalonia approves legislation to shape the Catalan tax system, its effectiveness will depend essentially on the will of Catalan citizens to abide by and comply with Catalan regulations.

If fiscal awareness of Catalan taxpayers translates into significant improvement in the percentage of voluntary compliance with tax obligations, as compared to what the Spanish government now obtains in Catalonia, the development of the administrative structure responsible for applying the Catalan tax system will be streamlined considerably.

In the first moments of operation of the Catalan state's Tax Administration, to ensure the continuity of tax flow and that taxpayers meet their tax obligations with total normalcy, the possibility of declaring much of the applicable tax laws and regulations in force before reaching fiscal sovereignty might have to be deemed temporarily applicable.

To facilitate the transition between Spanish and Catalan tax jurisdiction, in accordance with standard international community procedures, the Parliament of Catalonia will need to approve a bill governing non-residents' income tax.

Once the process for implementing the Catalan tax system is completed, the Tax Administration of Catalonia shall be integrated into the international network of tax administrations, which it should comply with. This administrative co-operation, essential for developing the tax application functions in a globalised world, will be particularly necessary with respect to the Spanish Tax Administration.

2.1.6 Customs service

A factor in boosting the economy of a country is having well-organised and efficient customs. A balance needs to be found between the intensity of control and the speed in managing customs procedures, lest excessive su-

pervision should unduly delay the entry or exit of goods with consequent costs for Catalan importing and exporting companies.

The two essential factors for organising customs management are, first, the public employees responsible for processing the import and export declarations and, secondly, the IT system that collects data from international traffic of goods. In both cases, the Generalitat of Catalonia should be able to mobilise human and technological resources to ensure smooth and safe traffic through Catalan customs, since an open and dynamic economy such as Catalonia's cannot allow any anomalies in the entrance, and especially in the exit of goods and products destined for foreign markets.

A customs authority or service will need to be set up to perform foreign trade duties and market surveillance, control and inspection. Based on the State Customs Surveillance Service (SVA) – which has a decentralised agency in Catalonia (the Regional Area, based in Barcelona) – six operating units could be established (Barcelona El Prat Airport, Tarragona, Palamós, Girona and Lleida), a combined unit (Figueres), and two marine bases (Palamós and Barcelona).

Also, a national contact point should be established within the corresponding Ministry – currently the Ministry for Business and Labour – for controlling the adoption of technical regulations for products.

A national accreditation organisation would be required, responsible for overseeing the performance of the various certification bodies and defining the legal framework in which it would operate. This role is currently carried out at the Spanish state level by the Spanish National Accreditation Entity (ENAC). Among other things, the new entity should be a member of the European Cooperation for Accreditation (EA).

To carry out the new market surveillance activities required by the EU in relation with the safety and environmental regulation objec-

tives, and to avoid unfair competition, in addition to the aforementioned customs, the Catalan Consumer Agency and the Catalan Food Safety Agency (ACSA) would have to be given more powers, and the Catalan Medicine Agency would have to be created from scratch (based on the current Pharmaceutical Control and Medical Devices Service).

In order to comply with the requirements of EU directives in this area, when it comes to organising customs management, from the very first moment the new state should have public employees ready who would be responsible for processing import and export declarations and a computer system capable of managing

international freight traffic data. These human and technological resources are necessary to ensure smooth and safe customs traffic in Catalonia.

In addition, the Mossos d'Esquadra police force would have to take over the Customs Surveillance Service and create new Inland Revenue units with its own staff. Moreover, the new state could take over – through transfer or distribution of assets and liabilities – all or some of the staff and material elements of the current decentralised bodies of the Customs Administration of the Spanish state in Catalonia (Regional Area, provincial offices and operational units).

2.2 Administrative authorities and structures of the new State

2.2.1 Competition and regulation authorities

At times, markets for goods and services do not spontaneously work correctly, because there may be agencies with excessive power that hinder efficiency and establish extraordinary benefits that harm consumers, imposing higher prices and/or worse quality. Therefore, protection of competition has been a traditional concern of European economic policy.

There are also some economic sectors in which the production and distribution structure itself determines the existence of few competition possibilities due to the existence of structural monopoly situations (such as, for example, and clearly, in the case of energy).

To address these two problems, the EU has gradually adopted legal harmonisation measures, requiring Member States to create national authorities responsible for ensuring protection of competition and regulate certain sectors, especially, but not exclusively, basic economic services and network services where a high level of liberalisation and harmonisation at the European level has taken place. This explains the growing importance of discussing protection of competition and regulation of network industries, implying the degree of power and autonomy with which these bodies are established.

Specifically, as far as the regulatory authorities are concerned, as of today, the EU requires Member States to have such authorities in place in the field of rail transport, gas and electricity and telecommunication services, which includes electronic communication services and those related to the use of the ra-

dio spectrum. Regulatory authorities are also required in relation to the financial system – banking securities market. Apart from these strictly economic areas and to protect postal service and environmental consumers, the EU requires the creation of a national postal authority and another one that guarantees the safety of nuclear waste and, more precisely “security for the management of consumed nuclear fuel and radioactive waste.” In addition to the regulatory authorities required by the EU, the new state could create those which it might deem appropriate.

European law allows states freedom to choose the institutional and administrative design of national competition and regulation authorities. In this sense, its format is not stipulated. It does require, however, that the national competition and regulatory bodies be public agencies acting impartially and transparently, and in particular as neutral public bodies with respect to any specific interest.

During the first stage of constructing the possible independent state, the guidelines and requirements of European regulations must be applied taking into account the principles of maximum organisational and functional simplicity. This is so because the representative institutions of a future Catalan state should define the most permanent characteristics of the institutional design of regulatory bodies and their functions.

It can be concluded that the simplest formula to organise the regulation functions in energy, telecommunications and transportation (rail) services during the transition period would be assigning to Catalan Competition Authority (ACCO) – which already exists – functions re-

lating to the guarantee of access to infrastructure. As for the rest of supervisory and regulatory functions, the simplest formula during the transition period would be to assign the responsibility to administrative structures of the Generalitat of Catalonia (as long as the requirements of fairness and transparency were observed). Regarding the national regulatory authority for postal services, the role could also be assumed temporarily by ACCO.

However, in relation to the regulatory authority for the safe management of nuclear waste and radioactive fuel, it should be noted that this is a new responsibility for the Generalitat and a committee or board for controlling it would have to be appointed.

Once the possible independent Catalan state is consolidated, the future Catalan lawmakers should opt for a more definitive design aligned with some of the following functional forms with respect to regulatory and competition authorities:

- Industry-specialised regulatory and competition authority: set up an institution specialising in competition policy and create a regulatory specialist in the various industries: energy, telecommunications (electronic communications and radio), rail, financial system, postal service and nuclear waste.
- Competition authority and one or more multi-sector regulators: set up an institution specialising in competition policy and create an institution responsible for regulating all sectors and different institutions that carry out these tasks with related sectors.
- Single, multi-sectoral regulatory and competition authority: integrate the competition policy and regulation of the various sectors in a single institution.

Additionally, it must be borne in mind that in addition to the regulators required by the EU, the future state can create new independent regulatory bodies or agencies and maintain the existing ones, such as the Broadcasting

Council of Catalonia (CAC) and the Catalan Consumer Agency.

2.2.2 Other administrative structures required by the EU

The EU also requires that Member States have administrative structures with the capacity to develop and implement European law and ultimately implement the EU's public policy.

a) Rail transport, electricity and gas energy services and telecommunications

Transport policy. In the field of rail transport, the only thing to be done is create an administrative structure responsible for security.

With regards to maritime transport, the new Catalan state would have to create an administrative structure that would take over the responsibilities of international maritime regulations, safety, pollution and inspection.

In the field of air transport, Catalonia has to create its own air navigation entity, integrated in the European aviation network (it could be created based on the existing control centre in Barcelona) and a Catalan Agency for Aviation Safety which would assume responsibility for aviation safety in the Catalan airspace (the flight safety office which EASA has in Sabadell could be used as a basis). A national supervisory authority would also need to be created to certify air navigation service providers.

Finally, in the field of smart transport and satellite navigation, the Government of Catalonia would create new units or agencies of the Ministries of Territory, Economics and Business that could participate in the European projects.

Energy. To meet EU requirements, an agency for managing strategic reserves would have to be created. Alternatively, Catalan energy reserves stored in other EU states could be accounted as national reserves; an independent National Regulatory Authority in the field

of Nuclear Energy to ensure the maintenance and safety of operating nuclear power plants (the EU suggests creating this authority, but it is not mandatory; in Spain this function is carried out by the Nuclear Safety Council); one or more private operators of the electricity market, and one or more private operators of the gas market.

For the promotion and regulation of cross-border networks in Europe, the new state should ensure the existence of a high voltage network operator and gas network operator who would carry out the necessary functions for the smooth operation of these networks.

b) Financial system and economic and social policies

Public procurement. In this area there would be no need to create any new body, since the Catalan Public Sector Procurement Administrative Tribunal could perform the tasks required by the EU.

Competition policy. In connection with mergers and antitrust practices, the Generalitat already has a body – the Catalan Competition Authority (ACCO) – which, equipped with more resources, could carry out the functions required by the EU.

Company law. A Commercial Register of Catalonia would need to be created, with the degree of territorial decentralisation deemed appropriate, although it could be organised based on the current provincial registers in Barcelona, Tarragona, Girona and Lleida, through a transfer from the Spanish General Administration to the Government of Catalonia. Likewise, a workforce of registrars would have to be developed, although current employees might be offered the possibility of keeping their jobs and positions, to later consider any need for new hires.

Free movement of workers and capital, right of establishment and freedom to provide services. The Catalan Social Security Agency, which would have to be created, would need

sufficient funds to guarantee the rights to do with the free movement of workers, which correspond to EU citizens living in Catalonia.

As far as the free movement of capital is concerned, a structure with administrative and cooperation capacity would have to be created. It would be responsible for disclosure and oversight requirements pursuant to European legislation on payments and combating money laundering and financing of terrorism. This structure is currently built into the Bank of Spain. The same solution could be adopted with the Central Bank of Catalonia.

Financial Services. Oversight functions required by European law in this area could be developed by a body or bodies in the new state. It is recommended that the Central Bank of Catalonia handle the supervision functions of financial institutions based in Catalonia and the subsidiaries or branches of major European banks active in Catalonia. Likewise, regulation and supervision of financial investments and market securities could be assigned to the future Catalan Investments and Markets Authority (ACIM).

Taxation. In this area it would be necessary to have the technological and administrative structures required to manage indirect taxes (VAT) and excise taxes, as well as agreements to avoid double taxation in relation to direct taxes. These functions should be assigned to the future Tax Agency of Catalonia.

Economic and monetary policy. The essential element for complying with the EU acquis would be the creation of a Central Bank of Catalonia which would be assigned the duties specified in the Treaties and in the set of rules that determine the operation of the European Economic and Monetary Union.

Statistics. It would only be a matter of bolstering IDESCAT so it could assume statistical processing in relevant areas such as the environment, trade and transport, and develop a complete and self-sufficient production and

statistical distribution model capable of integrating functions and powers currently in the hands of the Spanish National Statistics Institute (INE).

Social policy and employment. There are really few institutional requirements derived from European regulations in this area, but currently the Generalitat only handles Labour Inspectorate and the management of the EURES programme through the Employment Service of Catalonia (SOC). The following administrative bodies or structures would have to be created: a reference centre for the European Agency for Safety and Health at Work; administrative structures of the various European funding mechanisms (ESF, EGF, aid funds for the most needy, Employment and Social Innovation Programme) and a National Contact Point for the PROGRESS programme.

Agriculture and rural development. In this context, the new state should strengthen the following structures. the Aid Service and Paying Agency of the Department of Agriculture, which should expand its functions to carry out those currently performed by the Spanish Agricultural Guarantee Fund (FEGA); based on units of the Catalan Consumer Agency and the Catalan Food Safety Agency, an Information Agency could be created and food controls could be reinforced; and a Catalan institution could be created to carry out these functions in Catalonia based on the five Catalan insurance organisations that are part of the company bringing together and managing agricultural insurance companies at the Spanish level (AGROSEGURO), bearing in mind, however, that these bodies are private and that the formation of a group is voluntary.

Fishing. The Directorate General for Fisheries and Maritime Affairs of the Generalitat should assume the responsibilities of the Secretary-General for Fisheries of the Spanish Government, including the management of aid to the sector, and developing action plans in relation to structural actions defined by EU law, and it should include the two provincial offices of

the Instituto Social de la Marina and the Port Authorities of the ports of Barcelona and Tarragona.

In terms of inspection and control, a specialized body of fisheries inspectors would also have to be created.

Financial control. The Generalitat has the Comptroller General of the Generalitat and the Audit Office to be able to exercise financial control in accordance with the criteria of the Public Internal Financial Control (PIFC).

Both agencies meet the requirements of European legislation but would have to assume new powers. In the case of the Comptroller General it would assume control and supervision of local government, now in the hands of Spain's General Comptroller, and areas of exclusive competence of the state, such as defence and foreign policy. In the case of the Audit Office, it would have to take over the role of accounting judgment, which is currently exclusive to the Court of Auditors.

Regarding the fight against fraud, a unit of cooperation with other Member States (AFCO) would have to be set up, as well as a point of contact with OLAF (European Anti-Fraud Office). Specific units to combat fraud in the field of financial institutions would also have to be established (it could be located in the future Central Bank of Catalonia) and have a national centre for analysing coins and bills in order to detect forgeries.

c) Justice, rights, freedoms and security

Judiciary system and fundamental rights.

The new state should be equipped with the administrative institutions and structures necessary to continue the rule of law. The Generalitat already has many of these administrative structures and institutions. Others would have to be created based on Spanish structures currently in place in Catalonia.

Regarding the judiciary, in addition to legislative requirements, a new judicial system

would have be built from the ground up. Currently, the judiciary is not decentralized, but Catalonia has the infrastructure and human/material resources required to create a judicial system. The Generalitat of Catalonia has powers for the administration of justice, which means it owns justice-related buildings. It also has material and human resources in place. From this standpoint, the new state would assume all or part of the material means that the Spanish state currently has in Catalonia – whether by transfer from Spain or as a result of distribution of assets and liabilities – and staff, offering them new employment in the new judiciary. Regarding training of judges, Barcelona houses the Judicial School of the General Council of the Judiciary.

In the anti-corruption field, the Fraud Office could take over new control functions over public administrations, political party financing, money laundering and terrorist financing.

It would also be able to fulfil the requirements regarding the protection of personal data, reinforcing the powers of the Catalan Data Protection Authority as a competent authority.

The EU does not require specific administrative structures, regardless of the judiciary, for the protection of rights. In any case, it should be remembered that Catalonia already has some independent authority in this area. It has an Ombudsman, a rights protection authority in the field of broadcasting and various institutions for the protection of children's rights.

Justice, freedom and security. Two administrative services would have to be created: a border control service, which would enforce European rules of access to the EU and an immigration administration service, managing migration flows, both in relation to persons from EU Member States and those from third countries. In the first case, new units of the Mossos d'Esquadra (Autonomous Police) could be created to assume control of external borders and reinforce the police capacity in order to take over duties for combating or-

ganised crime, terrorism and drug trafficking. In the second, attempts could be made to try transferring or adding staff based in Catalonia, which today work for Spain. It would be necessary to:

- Create centres for immigrants, asylum seekers and victims of human trafficking.
- Designate a national contact point with EUROJUST (European Agency for Judicial Cooperation).
- Create a Catalan consular network to process and issue visas.

d) Education, culture, science and environment

Education and culture. Regarding the structures necessary for the implementation of European programs, the management structures for the European Erasmus+ programme would have to be implemented. The powers of the Agency for Managing University and Research Aid (AGAUR) would have to be developed to accept higher education studies, create focal points of the Eurydice network and the European Foundation for Quality Management (EFQM), and establish points of contact for the EUROPASS and eTwinning projects.

Science and research. In this regard, it should be noted that Catalan R&D structures receive significant funds from Spain and from research structures co-financed by institutions linked to the Spanish Government and the European Union. Therefore, the Government of Catalonia should make an additional financial effort to keep the financial funding of Catalan R&D. However, prior to transfer or as a result of the distribution of assets and liabilities, the new state may take all or part of the 21 CSIC research centres located in Catalonia.

In addition, the Government of Catalonia, through the Ministry of Universities and Research, should designate the representation structures and national points of contact between research programs, especially the Horizon 2020 program, a body coordinating

initiatives arising from articles 185 and 187 of TFEU, and an agency for agricultural research, which for Catalonia could be the Institute of Agrifood Research and Technology (IRTA).

Intellectual property right laws. The Generalitat Administration today has enough structures to meet the requirements relating to intellectual property rights. However, the protection of industrial property, which European directives and screenings handle jointly with intellectual property, is currently guaranteed by the Patent and Trademark Office, which is a non-regionalised register headquartered in Madrid. The Generalitat should therefore create the necessary administrative structure to protect this right.

Environment. The adjustment that should be carried out institutionally is inexpensive, although more skilled human resources should be hired in order to take over new responsibilities. However, in some cases new roles of a competent national authority, which are now performed by Spanish ministries, would have to be taken over. Specifically, it would have to be a competent authority to authorise and agree extraction activity, although the functions could be assumed by existing institutions in the Generalitat de Catalonia structure. In the field of waste management, a telecommunication equipment market oversight organisation would have to be created, although the Catalan Consumer Agency could also take over these functions. The functions of emissions registry would have to be taken over, and a national authority for implementing Kyoto Protocol projects would have to be created. A national authority and a national service of technical assistance for implementing the REACH and CLP Regulations (registration, authorisation, evaluation and restriction of chemicals) would have to be created. These functions are currently undertaken by the Ministry of Agriculture, Food and Environment and the Ministry of Health, although the Ministry of Territory and Sustainability has been carrying out functions under this regula-

tion and could take over these new roles. A national authority would have to be created in the area of noise contamination, which could be taken over by the services of the Ministry of Territory and Sustainability. And a national contact point would have to be created for the Common Emergency Communication and Information System, which could be taken over the services of the Generalitat's Directorate General of Civil Protection.

e) Consumer protection

Health and consumer protection. In order to meet EU requirements, it would only be necessary to strengthen the agencies – the Catalan Consumer Agency – and/or the existing administrative structures, such as the aforementioned DGs. This reinforcement should be more intense in certain areas where the Generalitat currently has no specific powers and the Spanish Government provides consumer protection – insurance, electronic communications, certain modes of transport and financial services, among others.

The duties of the Early Warning Mechanism (RAPEX) should also be taken over, and a national contact point should be designated.

Food safety and veterinary and phytosanitary policy. The only shortcoming in this regard would be in the area of foreign trade of food, animals, feed and plant material, which is currently under the exclusive jurisdiction of the Spanish state and is implemented by staff in Spain's General Administration. In this context, specialised foreign control units would be created with Generalitat civil servants who currently carry out their work in the field of food, veterinary and phytosanitary safety, to perform the relevant official controls and act in the four border checkpoints that exist in Catalonia and are currently managed by Spain's General Administration.

f) Foreign and security policy

Foreign relations. In this context, the new state, in addition to implementing the system

of customs and foreign trade border control set out in chapters 1 and 29, should strengthen the administrative structures of the ministries of economy, industry, trade and foreign affairs in order to exercise its powers in trade policy which the General Administration of the State currently carries out, for which it has ICEX and its extensive network of commercial attachés in Spanish embassies around the world. In this regard, it would be necessary to create a similar network based on the branch network of the Generalitat of Catalonia through ACCIÓ.

Regional policy and coordination of structural instruments. The Generalitat now has a team of professionals and administrative structures in the area of management and control – particularly the Directorate General for Policy and Economic Development (DGPPE) of the Ministry of Finance and Knowledge and the Generalitat's Comptroller General, which, with reinforcement, could take over the management, certification and auditing tasks required by the administration of EU funds.

Foreign, security and defence policy. In this context, a possible Catalan state should create its own institutional structures associated with a foreign diplomatic service, capable of applying a Common Foreign and Security Policy and the EU's Common Security and Defence Policy (CFSP/CSDP).

It would be necessary to reinforce the material and human resources or create new Mossos d'Esquadra units to ensure compliance with European regulations pursuant to the protection of classified information. Administrative structures would have to be created that allow adequate compliance of restrictive measures adopted by the European Union with respect to third countries (in the diplomatic, commercial, security and intelligence fields). And the new government would also have to create mechanisms for ensuring compliance with EU decisions, strategies and policies (such as strategy to combat the proliferation of small and light firearms or security instruments on classified information).

2.3 Catalan Social Security

2.3.1 The Catalan concept of Social Security

Social Security is, due to its size, the basic institution guaranteeing the welfare state in all European countries. Currently, in Catalonia a significant number of people are recipients of Social Security income. The number of people (approximately 2.2 million) that sometime in the last year have received directly from Social Security all or most of their financial resources is close to the figure of the total employed population contributing to Social Security (approximately 2.96 million).

In the medium and long term, the improvements that should be introduced into the Social Security system should be guided by the principle of respect to Social Security international standards. There is no single social security model in the world. In fact, there is actually no overarching concept of what is included in the concept of Social Security. Internationally, the first common criterion of what Social Security is about is Agreement no. 102 of the International Labour Organisation (ILO), which specifies not only what areas of protection national social security systems must have, but also what the minimum intensity of this protection is in order to avoid false coverage.

It is worth noting that these international guidelines establish minimum conditions. Various countries may, however, cover other social contingencies. For example, in France more than six million people receive Social Security aid for housing (similar to systems in Finland and Germany) as a kind of family benefit for families with children when it comes to paying rent, purchasing property or improv-

ing healthy living conditions. This concept of protection by Social Security is totally alien to Spanish Social Security, except for some special public employees for whom the Social Security system allows them to enjoy years of aid for the purchase of property, as additional benefits provided for by their specific group agreements.

The nine branches of the Social Security system. What should be understood as part of the concept of Social Security? Both Convention 102 of the ILO and others from the same organisation and the European Code of Social Security drafted by the Council of Europe, indicate nine areas that are intrinsic to a social security system: health care; temporary disability due to illness; unemployment; old age; work accidents and occupational diseases; family protection; motherhood; permanent disability and benefits for death and survival. This does not mean that all states are required to comply with all provisions of treaties to each of the areas mentioned. There may be significant differences between countries, and not all of them give all branches the same importance.

It is interesting to note that internationally these nine branches have been considered as typical of a social security system, and that each of these branches should meet the established minimums that must be met by both in relation to the effective capabilities of the protected population as compared with the conditions for access to services (for example, the prior contribution period required). It also establishes the minimum amount of economic benefits, comparing them to the earnings of a typical skilled worker.

Therefore, according to the spirit of continuity in levels of social protection as mentioned before, it would be important for:

- The future Social Security System of Catalonia to provide effective and sufficient social protection in the nine protection branches indicated by the ILO and the Council of Europe treaties, which establish minimum standards;
- and that in no event changes may be made that involve a drop below these European standards; on the contrary, we should target the compliance of levels stipulated in the European Social Charter revised in 1996, since the majority of European countries has ratified it, and the revised European Code of Social Security.

2.3.2 Functional and organic aspects

The Catalan State must have, from the first moment of its creation, a social security system capable of performing the basic functions of this institution, vital to the welfare state, in accordance with international and European standards.

These functions are essentially the following five:

- The collection of Social Security funds.
- The provision of pensions and other benefits.
- The actuarial and sustainable design of the system and the financial and actuarial management of reserves.
- The management of reserve funds and investments.
- The administration of human resources and technological systems.

The Catalan Social Security Agency should be in charge of performing these functions. To exercise this control, it could make use of the indirect public service management techniques, provided that this does not diminish transparency and accountability. It remains to be determined whether part of the funds col-

lected would have to be shared with the Tax Administration.

The Agency may depend from Parliament. Agency government could be the responsibility of a steering board aided by a council.

The staff serving the Catalan Social Security system would be about four thousand people. Personnel costs would be close to 130 million euros and would have nearly two hundred offices and other facilities.

In the first stage of the constitution of the new state, the Government's activity in this area should be governed by the principle of continuity. In the medium and long term, the improvements required by European and international standards should be introduced.

In any case, the basic objectives that should steer the activities of the new state in terms of creating the Social Security system could be stated thus:

- The citizens of Catalonia should have guaranteed pensions and other Social Security benefits as they have been recognised in the same conditions until the present, regardless of the scenario in which the independence process takes place.
- The citizens of Catalonia have to have the certainty that in the future they will have access to Social Security benefits of the same quality, at least, as what they have been able to enjoy so far.
- Citizens of other nationalities who have worked for some time in Catalonia or who wish to do so in the future should be assured that they will be treated as they have until now in relation to their possible Social Security rights, and that in any case the European and international coordination guidelines will be scrupulously respected.

2.3.3 Contributory pensions and sustainability of retirement pensions

The balance (income less expenses) of the

Social Security system in its entirety is quite different in Catalonia and the rest of Spain. The analysis of 1995-2010 data leaves no doubt. While in Catalonia Social Security has always enjoyed a surplus from 1997 to 2008, in the rest of Spain surplus was only seen between 2003 and 2007, and for clearly lower amounts. Moreover, when Catalonia has recorded deficits (1995-96 and 2009-2010) it has been, in all cases, significantly lower than in the rest of Spain, where in 2009 the Social Security deficit reached 21.967 billion euros and the costs of Social Security exceeded 21%, while in Catalonia the deficit stood at 1.254 billion euros and expenditures exceeded revenues only by 5%. And in 2010, when the Social Security deficit continued to rise due to the increase in unemployment, in the rest of Spain expenses exceeded revenues by 25% (and deficit reached 26.317 billion euros), while in Catalonia expenses exceeded revenues by only 8.6% (and deficit was 2.142 billion euros).

Since the Social Security system has slipped into deficit in Catalonia due to the economic crisis, although it has done so in a much lower proportion than in the rest of Spain, it is important to ask ourselves how deficit will be addressed in an independence scenario, if it occurs when the economy has not recovered to levels required to generate balance or surplus

in the Catalan Social Security accounts. On the one hand, in the case of an agreed independence process involving the distribution of assets and liabilities, a portion of the reserve fund will be transferred to the new Catalan state. The rate that corresponds to Catalonia would depend on negotiation. It would be correct to say that Catalonia should be assigned the part of the reserve fund coming from Social Security surpluses in Catalonia. This proportion would be significant, since, as we have seen in the boom years, Social Security enjoyed greater surpluses in Catalonia.

However, in the case of a non-agreed independence process, or in the case of a negotiation of assets and liabilities extended over time, years after the effective independence, the new Catalan state would cover the deficit with ordinary budgets of its own public finances. If Catalonia had gained its independence in the 2006-2011 period, once the costs of the current Generalitat and the expenses of the state powers it might have assumed were addressed, it would have had access to an additional income of 11.198 billion euros per year on average. With this additional net income, there would be no problem in addressing the Social Security deficit for the duration of the crisis.

2.4 The judiciary and the administration of justice

Whatever the creation scenario of a new Catalan state, the basic objectives which should be ensured in the field of the judiciary and the justice administration are, firstly, a guarantee of the continuity of the justice administration and its normal operation, and on the other hand, the establishment of a provisional government system for the judiciary. However, this transition phase is not the time for establishing the new judiciary and justice administration model to be applied in the new state. Rather, this is a matter that should be decided with the new Constitution. The various issues involved in these basic objectives are discussed below.

2.4.1 Organisation and jurisdiction of courts

After a proclamation of independence, the Spanish courts located outside Catalonia with jurisdiction over the entire country (Supreme Court, High Court and Central Courts, which should also include the Central Economic Administrative Court, although it is not judiciary in nature), as well as the Constitutional Court, would no longer have jurisdiction in Catalonia. The judicial functions of these bodies in all matters affecting Catalonia should therefore be transferred to Catalan courts (High Court, County Courts, Local Courts).

The current organisation of courts in Catalonia, with the assumption of new responsibilities, would remain basically the same, with the exception of the High Court, which would have to adapt to the new situation, although with the minimum possible changes. These changes would include considering the division of the existing civil and criminal courts in two different areas, one for each of these juris-

dictional divisions, the creation of a board for defending fundamental rights and a board of appeals.

To ensure the normal operation of the justice administration during the transitional period, it is essential to ensure that the existing positions of judges, prosecutors and court clerks are covered, at least at the same level as at present. Vacancies that may exist for any reason may be covered by the methods provided for by legislation currently in force and also resorting to, if necessary more than at present, the traditional method of alternates and substitutes.

The staff of the current justice administration in Catalonia is also made up of various state bodies (managers, handlers and legal assistance staff, as well as coroners) that, nevertheless, the Generalitat manages as responsible for establishing appropriate mechanisms to temporarily cover vacancies that may occur. This is done using temporary staff, appointed in this capacity from the human resource pools managed by the Generalitat's Department of Justice. For this reason, special problems are not expected which could jeopardise the ability of meeting staff needs.

The same can be said of material means, including IT, required by the justice administration for its operation, and which are already handled by the Generalitat of Catalonia.

Once Catalonia's own judicial administration is established, the Catalan Government should, on the one hand, assign the bank that would manage deposits and consignments, and, secondly, request the bank managing the deposit and consignment account for the

Spanish government to transfer the funds in question according to the specifications of the Catalan courts.

The normal operation of the justice administration requires access to certain files and records, some of which are filed by the judiciary (prisoners, protection of domestic violence victims, among others) and currently included in the Justice Administration Support Administrative Records (SIRAJ), while others are located outside the judicial system, but in many cases can be viewed by the courts through a single computer portal (Punt Neutre Judicial). The Civil Registry likewise deserves special consideration, given its importance and the recent changes in legislation it has undergone, with the establishment of centralised information management.

In all these cases, the courts of Catalonia would require access to these records and files, while the Generalitat would also create the corresponding files and records based on the transfer of the appropriate part of the state archives and the collection and processing of new information, from the moment in which independence is declared.

2.4.2 Regulation of court procedures and language system

Judicial proceedings are currently regulated primarily by Spanish laws, given the current distribution of powers between the Spanish government and the autonomous communities. Should the Spanish system break up there would therefore not be applicable procedural law in force. To avoid the regulatory gap that would occur, and for reasons of legal certainty, it would be advisable to keep the procedural law applicable at the time when the new state is created, incorporating it provisionally into the Catalan jurisprudence, with any appropriate modifications, as we wait for the Parliament of Catalonia to legislate on the matter. The incorporation law should also include the transitional arrangements for its im-

plementation, ensuring the continuity of cases in processes, including appeals.

Regarding the language system of judicial proceedings and actions, it would be worth introducing in the incorporation law the necessary provisions to ensure the normal use of Catalan with a two-fold aim: guarantee the right to linguistic choice in proceedings and, for this purpose, ensure that all staff is qualified linguistically in Catalan and Spanish. This means that an adequate and sufficient familiarity with both languages should be a requirement for these positions, and not just optional. Having established this general principle, we should distinguish between people who already occupy a position at the time when the new state is created those who are hired after the fact, and establish a transitional regime for the first category.

2.4.3 Pending processes and judicial executions

From the first moment it becomes a new independent state, Catalonia should address the legal proceedings pending final resolution, especially in the case of proceedings started in Catalonia and pending appeal in a court outside Catalonia, and those started in the first instance before judicial bodies outside Catalonia (High Court and Supreme Court) involving people with the new Catalan nationality or, in some cases, resident in Catalonia, or Catalan governments or institutions. Likewise, open procedures with the Constitutional Court which could affect persons or institutions in Catalonia should be taken into account.

In all these cases, the procedures should be followed according to the procedural rules in effect at the time of the proclamation of independence (which would have been incorporated in the new Catalan constitution). The question that arises is which court should continue dealing with these cases. There are two possible general solutions. First, send af-

affected cases to the new Catalan courts to be assigned to the bodies that replace them and are competent in the new judicial organisation. And, secondly, continue the cases in the Spanish courts until their final resolution, and subsequently recognising these resolutions. Either criteria would adequately resolve this temporary situation, with each case presenting advantages and disadvantages. Choosing one solution or the other (or a combination of both, could even be differentiated by jurisdictions) will depend on political circumstances and specific negotiation established with any agreements that may ensue.

The Constitutional Court is a case in point. In fact, the only affected cases (at least potentially) would be the appeals issued against decrees by Catalan institutions or bodies (or, less likely, nationals and/or residents in Catalonia). However, all other procedures processed by the Constitutional Court would be repealed. Regarding appeals, and as long as the regime of basic rights and liberties applicable to Catalonia were during the given period the same as the Spanish Constitution, the same criteria applicable to procedures followed in ordinary jurisdiction could be applicable. In any case, from the moment in which the new state is established, the resources for the protection of fundamental rights should follow the provisions of the Interim Constitution Law of Catalonia, and could not be brought before the Spanish Constitutional Court.

Regarding the issue of judicial executions outside Catalonia issued by Catalan courts and executions in Catalonia ordered by external courts, outside Catalonia, including, significantly, the Spanish courts, these cases should be resolved via the relevant judicial cooperation agreements which should be formalized in terms of reciprocity between Catalonia and other states, including Spain, following the framework of European judicial cooperation both in the criminal and in civil spheres, which is based on the mutual recognition of judicial orders.

2.4.4 Provisional judiciary system of government

Since the creation of the new state until the approval of a new constitution, it would be necessary to establish an interim judiciary system for Catalonia, through the Interim Constitution Law. This interim system should not predetermine the final institutional model of governance for the judiciary adopted by the future Constitution. In this case, however, and in contrast with other institutions and issues, it is not possible to continue with the system currently in force, as it would require the creation of a new body similar to the General Council of the Judiciary. Thus, the new model that would determine the future Catalan Constitution would be defined in such a way that would be difficult to reverse.

Joint Committee of the TSJC Board of Governors and the Generalitat Government.

The models which would have to be used in the interim period may be diverse. It would seem that the most appropriate model would be, in the interim, for the Generalitat Government and the Board of Governors of the High Court of Justice to share government functions. This solution provides a certain degree of continuity (the Board of Governors already collaborates with the General Council of the Judiciary in governance of the judiciary) and would not prevent the future Constitution from switching to a council system. By contrast, establishing an interim council – in addition to the added complexity of regulating it and re-creating it – would complicate a hypothetical subsequent change of government functions, in whole or in part, towards the executive.

In this interim system, the Board of Governors of the High Court of Justice of Catalonia could assume certain government functions and others could be attributed to a joint committee of the Board of Governors and the Generalitat Government, equally. Apart from this, both the High Court Board of Governors and the Justice Department would maintain their cur-

rent responsibilities. The Justice Department would also assume the duties now assigned to the Ministry of Justice.

2.5 Law enforcement and defence

While there is already a law enforcement model in Catalonia – based on citizen safety and emergency management – we have not been able to develop many other components that are part of any state's basic internal security structures because they are currently powers of the central government. And, therefore, the components related to international law enforcement have not been created or developed.

Law enforcement is a public good that a state must necessarily provide its citizens. Law enforcement is both a right for citizens and a duty for the state, a fact which implies it should be provided as a guarantee and also as a service. And in an increasingly interdependent world, providing law enforcement requires coordination both internally and internationally.

Law enforcement provision is linked to the provision of freedom and justice. Providing law enforcement requires supplying various instruments, distinguishing between the field of internal security (limited to what happens inside a country's own borders) and the field of external or international security (linked to facts, actors or international, cross-border relations). Providing domestic and international law enforcement is linked to many other public policies and can take over very different organisational forms.

It must be borne in mind, however, that the law enforcement strategies of Western European countries and organisations, although distinguishing between internal and international law enforcement, focus almost on the same threats: terrorism, cyber security, energy security, fighting organized crime and protecting basic or critical infrastructures, among oth-

ers. Coordination and intelligence are at the core of law enforcement practices. Police and military forces are alternating functions. What differences remain have been partially blurred in some cases, a fact that gives some police forces more clearly military or defence functions.

Catalonia's current law enforcement system has been built around two main components: public safety, provided mainly by local police and regional police, and emergency management, combining professional and volunteer forces. Alternatively, there is also everything related to private security. The model has a clear public security outlook.

2.5.1 Defining elements of the new law enforcement system

Catalonia, due to its size, economic structure and geographical/geopolitical location faces risks and threats similar to other European countries. It faces no territorial threats from its neighbours, at least not militarily speaking. In addition, Catalonia will continue to be embedded in the European, international scene with strong transatlantic relations, so it will use EU internal and international law enforcement standards as its benchmark.

The fact of being a country with newly established borders will intensify some risks and threats, due to the combination of difficulties related to a transition towards a broader law enforcement model and the need to restructure the existing model.

Worth noting also are the difficulties arising from uncertainty about the degree of collaboration with the Spanish state and the need

to quickly implement many decisions that increase the complexity of managing the system. We must be very careful and cautious as we strive to realise – based on shared interests and with the support of European organisations and third countries – the coordination, transfer of information and joint work with Spain to prevent cross-border and shared threats.

2.5.2 Options and actions in the field of internal law enforcement

Investigation of internal and transnational organised crime. The immediate actions to be taken are as follows:

- Strengthen existing capacity of the Mossos d'Esquadra (CME) as specific unit.
- Coordinate the functions of the CME unit to the future intelligence service, awaiting the decision to see if the intelligence service becomes a specific unit, as is the case in other countries.
- Initiate actions under standards comparable with Interpol, Europol and other similar bodies.

Terrorism and drug trafficking. The immediate actions to be taken are as follows:

- Create a counter-terrorism unit based EU-developed tools, approaches and assessment/guidance documents. We must pay particular attention to the significant presence of jihadism in Catalonia and what we know about the radicalisation processes of its members. We could envisage subsequently hiring personnel from similar services in existence today.
- Pursue, within a co-operation scenario, the transfer of existing information and, in turn, provide coordinated monitoring of changes.
- Request advice and establish collaboration agreements with the main specialised agencies in Western countries.

Border control. The immediate actions to be taken are as follows:

- Create a border control unit and provide it with proper facilities, with international advice. This unit should fulfil functions and have the expertise to act as border police, customs police, and coast guard.
- It should be developed as an embryo of one or more units for border control or protecting national spaces.
- Study the more complicated case of air-space control, seeking initial support to implement it until the proper equipment is made available.
- Prepare tenders or procedures to have the necessary equipment.

Civil identity registry. The immediate actions to be taken are as follows:

- Create an identity registry unit within the CME.
- Set up a transitional information transfer mechanism with Spain which could foresee, in the future and depending on a possible dual-nationality scheme, permanent collaboration and information transfer systems.
- Set up the transfer of databases and logs on vehicles and driving licenses, as well as mechanisms for cooperation and coordination with Spain and other countries.

Immigration. Establish, with advice from the EU, an initial collaboration mechanism with Spain while a specialised group – independent from CME – is created and provided with staff and equipment.

Arms control. The immediate actions to be taken are as follows:

- Create an arms control unit as part of CME.
- Set up a transitional information transfer mechanism with Spain which could foresee, in the future and depending on a possible dual-nationality scheme, permanent collaboration and information transfer systems.
- Set up the transfer of databases and records on the matter, with cooperation and coordination mechanisms with Spain and other European countries.

Environment. The immediate actions to be taken are as follows:

- Create an environmental protection unit – initially as part of CME – leveraging the existing elements and partial capabilities, including Rural Agents.
- Establish coordination mechanisms and seek advice from the EU and international, specialised organisations in Spain to ensure that we meet standards and best practices.

Intelligence. The immediate actions to be taken are as follows:

- Begin building a civil and multidisciplinary intelligence service, with the legal framework to ensure that its actions are consistent with the rule of law and guaranteeing the protection of fundamental human rights. Do so seeking international advice – from diverse sources. Its basic function would be to strategically collect, analyse, interpret and process information to favour decision-making.
- Ensure coordination of services through proprietary service instruments and others that the Department of the Presidency may recommend or develop. This coordination does not undermine the fact that there may be several independent services, or at least operating units.
- Establish early co-operation and coordination with Spain and European and Western countries and organisations.

Cybersecurity. The actions to be taken, taking advantage of the existing public capacities and also in the private industry field, are as follows:

- Create a cybersecurity unit or service, with advice and operational support from external companies and services, and based on existing capabilities.
- We recommend starting with the plan of action against cybercrime adopted by the Council of Europe (2010), the various Europol guidelines and the EU's Cyber Security Strategy (2013).

2.5.3 Taking on the civil protection and emergency management tasks guaranteed until now by the central government

It will also be necessary to take over the civil protection and emergency management tasks guaranteed until now by the central government. In this area, a new plan for civil protection and emergencies should be prepared, with a restructuring in keeping with Catalonia's condition as a new state, both in terms of institutional and technical/operational bodies. Moreover, if necessary, an operating unit for addressing complex emergencies should be established based on the Firefighter Corps and the City Council, and protocols and co-operation agreements should be established with emergency services from neighbouring countries.

2.5.4 International coordination with police forces

From the point of view of international police coordination, within the EU, as long as Catalonia is not a full member, coordination (using permanent links and cooperation protocols) and compliance with the plans and standards of the European Police Office (Europol) should be ensured. Compliance should also be guaranteed with the European Agency for the Management of External Borders of the Member States of the EU (Frontex), the European Agency for cooperation in judicial matters (Eurojust) and the Standing Committee on Internal Security (COSI). And internationally, we should request admission to Interpol.

2.5.5 Options and actions in the field of international law enforcement

Catalonia will have to resolve, in the context of full integration as a member of the international community, many issues related to

its presence in security agencies, treaties on the matter, and especially coordination in international security. So far, all these issues have been the responsibility of the central government.

We consider four cases: transatlantic relations with the United States, membership in the OSCE, membership in NATO, and membership in EU security structures and agencies.

Regarding transatlantic relations and treaties with the United States, it would be necessary to formally demonstrate from the outset Catalonia's desire to have close relations with the United States and in this context, forge strong transatlantic relations.

As for membership in the Organisation for Security and Co-operation in Europe (OSCE), which plays an important role in human rights mediation and protection issues, we consider that, despite how difficult it is to be accepted (requires unanimous approval) we should express Catalonia's interest in being a member, sign and implement the principles and agreements of the organisation.

As for membership in the North Atlantic Treaty Organisation (NATO), worth noting are the changes in the organisation, the new membership mechanism and the organisation's role in the creation of the Partnership for Peace programme, based on the bilateral relations between individual countries and NATO, where almost all European countries are present. The following could be considered:

- Request and negotiate Catalonia's participation in the Partnership for Peace.
- Decide on possible membership at a later stage, once the major defence and security options under the constitutional process can be duly considered.

In terms of membership in EU security structures and institutions, it is worth noting that full membership implies some very important tools in the field of international security, essentially intergovernmental, such as the Com-

mon Security and Defence Policy CSDP, part of the Common Foreign and Security Policy. We believe that the various EU treaties, strategies and instruments should be taken as a starting point in designing Catalonia's security policy.

2.5.6 Operating model, bodies, contingents and organisation

There are at least three problems that must be solved in the medium and long term and for all three there are several options to consider before choosing.

First, especially in the area of internal security, is everything relative to the model of relationship or consolidation between local police and the Mossos d'Esquadra.

The second major problem concerns how to organize defence forces, or, stating it clearly, the option whether to create an army or not, and if so, the options on existing models to implement the decision.

Catalonia's situation presents an important advantage. It can create a model from scratch, bypassing the problem now faced by European countries, who are quantitatively and qualitatively changing their armies, created centuries ago, when armies were created to defend borders from possible invasion by other armies. This approach no longer makes sense due to a lack of territorial threats.

The issue is now looked at very differently from how it was seen in the 19th and 20th centuries. Catalonia can opt for two general models: with or without army. If the country were to opt to forego a traditional army, in the sense of an army in widespread use in the western world in the 19th century, there would be two main ways to organize the defence policy:

- Expand the functions of the Mossos d'Esquadra force, making it take over external and/or defence functions, which would imply a partial militarisation of some parts of the Mossos units and forces.

- Create an autonomous National Guard which would handle security, defence or emergency management functions, coordinated with other law enforcement agencies.

The second major model is to create an army which, given the new conditions, could be very different from the typical armies which existed until the end of the 20th century. Naturally, there could be various effective approaches for structuring this army and making it operational.

Thirdly, once either of the options is decided (with or without an army), and in each case a choice is made for one of the possibilities, the next step would be to make decisions regarding force size, control, selection processes, equipment and temporary admission of foreigners. We must insist, however, that major decisions should be taken during the constituent process, although the operational and implementation decisions will be postponed.

2.5.7 Cybersecurity

Given the importance of cyberspace in today's society, the concept of cybersecurity is increasingly present in the personal, professional and, above all, government spheres. There are many cases where computer attacks have jeopardised economic sectors, critical infrastructure and even government information systems.

Catalonia is aware of this threat and since 2009 has a national plan in place to boost ICT security in Catalonia, deployed by the Information Security Centre of Catalonia (CESI-CAT).

However, not all protection objectives are optimally covered by this body. While the perimeter and interior of Generalitat ICTs are under constant monitoring and control by CESICAT, and although there is some co-operation between this agency and law enforcement (Mossos d'Esquadra), more capabilities must be

deployed in the field of cyber defence and intelligence, understood as the ability to investigate and prevent future attacks.

In order to strengthen this aspect of cybersecurity in the government sector, we should take into consideration the adoption of the following measures:

- Maintaining co-operation with different Spanish organisations, such as the CCN-CERT and INTECO, to ensure the security of common cyberspace; ensuring that agencies responsible for implementing the National Information Security Plan can defend the country from cyber-attacks; starting conversations and making contacts with other Computer Emergency Response Teams (CERT) in the Catalan and international spheres, in order to have as many allies as possible in this field.
- The protection of the public data of citizens of Catalonia, as well as data processing centres (DPC) used by the Government, through the preparation of a disaster recovery plan with alternatives, if necessary, outside Catalonia.
- The preparation of databases for having an operational electoral system, identification documents and an Inland Revenue system ensuring suitability and accuracy of data in the treatment of citizens and businesses.
- The creation of a single ICT command structure in Catalonia, which includes the main agencies with jurisdiction in the matter.

Interpol. Established in 1923, the International Criminal Police Organisation currently has 190 members and focuses mainly on public safety, terrorism, organised crime, human trafficking, arms and drugs, child pornography, money laundering, financial crimes and corruption. It has two main governing bodies, the General Assembly and the Executive Committee, as well as a Secretary General.

Membership is by a favourable vote of two-thirds of the members of the General Assem-

bly. Given the current situation of the fight against certain forms of international terrorism, it seems obvious that it would be in nobody's interest for Catalonia to remain outside this or-

ganisation. Therefore, membership should be sought during the first phase of integration in the international community.

2.6 Infrastructure: energy and water supply and information technology and communication

2.6.1 Power supply

With 2009 data, energy consumption in Catalonia stands at 14,550 kTEP/year, of which only 5% comes from own resources. Primary energy consumption is distributed as follows: 47% oil, 25% gas, 20% nuclear, 7.5% renewables and waste and 0.5% coal.

Catalonia, like most European countries, has no ability to self-supply crude oil, natural gas or uranium. However, it does have appropriate facilities and processes to handle supply, storage, production, processing and distribution of derivatives to meet energy demand and ensure optimal consumption.

Likewise, the Catalan electrical system is structurally oversized and can guarantee 100% of demand. It has a 40% power safety margin, 20% of which is technically required reserves and 20% is surplus capacity. With a hypothetical 3% annual growth in power demand, the current Catalan power generation capability could successfully cover the Catalan market until 2020, without having to build new plants. The Catalan electrical system could supply energy at prices 30% lower than the Spanish power system. An independent Catalonia would be one of the EU countries with the lowest electricity prices.

The 2012-2020 Catalan Energy and Climate Change Plan also provides for the entry into service of new interconnection lines that will significantly boost the already good Catalan exchange capacity with its adjoining systems.

In view of the major liberalisation and interconnection of the energy market, ownership of most of the energy infrastructure in Catalonia belongs to private investors and multina-

tional companies who handle the full cycle of the business, which ensures the availability of energy, maintenance, development and expansion of their facilities, as well as the most appropriate management. In any of the future circumstances that could play out, these companies consider Catalonia a significant part of their market, and business interests themselves will ensure that management will be as efficient and standardised as possible.

The contribution of renewable energy production in Catalonia is currently still very small and it would need to increase. Therefore, commitment to renewable energy stands out as one of the priority energy strategies, both end-use technologies such as thermal technologies and for production of electricity. Likewise, the future Catalan energy system should promote enhanced energy recovery from waste, both renewable and non-renewable.

Measures. To ensure a proper energy transition in Catalonia during the transition towards independence, a series of measures must be adopted, including the following:

- Securing strategic suppliers and renewing and continuing the regulatory framework of the energy policy, using the existing contracts with companies that already provide these services in Catalonia.
- Ensure compliance with regulatory provisions on energy security.
- Establish and develop rules, regulations, planning and implementation of the Catalan energy system. This would imply negotiating the main installation transfers or uses, regulating and operating agencies (Spanish) and services that might have to be replicated in Catalonia.
- Ensure energy supply in the country, pay-

ing particular attention to the control of facilities located at ports and airports.

- Have a shared vision of all energy systems and their installations, and know how to ensure protection.
- Have a good system for regulation and management of the energy market to ensure competitiveness of supply and environmental protection.
- Conduct an audit of the entire system to get an accurate picture and provide appropriate service, economically weighted based on actual costs.
- Create a management team that would take over the political and technical functions which would ensure the proper operation of the energy system.
- Fix regulated costs of energy prices (oil, electricity, etc.) and ensure the tariff structure.
- Subscribe Catalonia, following the established procedures, to international energy organisations.
- Ensure that energy services are fulfilled in any stage. Apply international law, especially in the nuclear field.
- Ask for the delimitation of Catalonia's coastal waters to ensure the use of fossil energy resources (oil, gas), renewable energy (wind, waves, currents) and facilities currently under construction (Casablanca oil well).

Measures especially affecting the gas sector

Remain connected to the peninsular gas system, ensuring interconnection with France – via MIDCAT – and promoting an organised secondary natural gas market (gas hub), which could include all southwest Europe.

Measures related to nuclear energy

Continue uranium conversion and enrichment processes and production of fuel elements in the current plants and factories located outside Catalonia; not modify the origin of uranium or contracts with fuel suppliers; tempo-

rarily allow ENRESA to continue radioactive waste management, and analyse and decide on a centralised, interim solution for radioactive waste.

Measures related to renewable energy

Convert the use of renewable energy sources and energy efficiency as a national priority; promote R&D in this area; put in place a regulatory framework to develop and reward own these technologies and ensure economic viability; and integrate renewable energy to future electric energy storage systems and interconnection with neighbouring countries.

Electricity-related measures

International power contracts should be established in coordination with the Iberian Electricity Market (MIBEL).

Once the system is stabilised and in regular operation, the priority would be to implement the goals set out by the EU for 2020 and summarised in its 20/20/20 Strategy. Coordination agreements should also be set up with Spanish energy operators to ensure the construction of new priority facilities and natural gas and electricity connections with France.

At the same time, it would be advisable to establish a technical committee to coordinate energy management together with Spain and France, negotiate with the Spanish government the possibility of becoming a member of ENUSA and increase ties with Mediterranean countries in energy-related areas.

Among other measures, we should also anticipate and adopt a solution for the future location of Catalan nuclear waste; create the necessary measures to promote bilateral agreements between electricity market operators, both for buying and selling energy; increase energy self-sufficiency; reduce dependence on fossil fuels and improve energy efficiency throughout the process of generation, transmission, and especially in reducing primary and final energy consumption.

Finally, it would be necessary to improve the quality of energy services, modernise distribution networks, reduce environmental impacts and increase social awareness on the management and efficient and responsible use of energy. And also track energy oligopolies and influence lobbyists' influence.

Responsible and collaborating management. In view of the liberalisation and interconnection of the energy market, a scenario of belligerence with Spain or industry companies is not likely. Collective and responsible management among all parties is more likely. In the case of non-collaboration, however, the Catalan energy system would operate with total normality and energy supply would be guaranteed. The new state should adopt measures relating to renewals of agreements and contracts with companies that currently provide services and negotiations for transferring assets with Spain.

In this regard, it is important to establish a fluid and ongoing connection with European energy agencies, especially those linked to energy security. This should allow finding European cooperation channels.

Finally, Catalonia should study the creation or adaptation of some technical bodies such as the Catalan Energy System Supervisory Agency, a Catalan Electric System Operator, a Catalan Gas System Operator and a Nuclear Safety Council.

2.6.2 Water supply

Erratic rainfall, typical of the Mediterranean climate, compounded by the historical lack of investment in supply infrastructure and deficiencies in water quality as a result of pressure from human uses, have contributed to the past establishment of a water system in Catalonia with a high risk in terms of water supply, especially in the Ter-Llobregat management system, where more than 80% of the population of Catalonia lives. Currently this risk has been greatly reduced.

The adoption of the Water Framework Directive (WFD) has been a watershed event in the conception of water and management policies. According to the WFD, on 23 November 2010 the Generalitat Government approved the Management Catalonia River Basin District Management Plan (PGDCFC), based on radically different foundations than those which inspired the Hydrological Plan for Catalonia basins in the last quarter of the 20th century. The PGDCFC is the water planning tool for the 2010-2015 period within the territorial jurisdiction of the Generalitat of Catalonia and has a double objective:

Environmental: go from a performance of 48% to 56% in very good or good ecological, chemical and/or quantitative condition of water bodies. For Catalonia as a whole, the goal is to go from 60% to 67%.

Water availability: resolving the historical risk situation mentioned, ensuring that the supply systems do not face emergency situations under any known weather situation, drastically reducing the frequency and intensity of use restrictions (including agricultural irrigation) and ensuring environmental flows for water ecosystems. The proposed actions, some of which have already been implemented, are aimed at maintaining this guarantee until the 2027 horizon.

The PGDCFC has a program called PGDCFC Measures Program which specifies the set of measures both in terms of infrastructure and management, funding and promotion, in order to achieve the objectives outlined in the Plan. It has a ten-year projection (2006-2015) and is divided into four action areas: supply, sanitation, environment and irrigation system modernisation.

The legal and technical framework of the EU is available for planning, regulation, management and control of water in Catalonia until 2027 (WFD horizon), as well as measures to be implemented in order to achieve the objectives set out, in view of the development and

approval of subsequent management plans. The roadmap seems clear.

The water risk for Catalonia is directly correlated to the likelihood of suffering water use restrictions due to the effects of a drought or a very low level of water reserves, for example. In recent years this structural deficit has been especially limited to the Ter-Llobregat management system, thanks to the partial implementation of infrastructures contained in the program of measures created as a result of the 2007-2008 drought. Today, the deficit in the Ter-Llobregat system is almost nonexistent, due to the significant water savings that has been carried out.

Moreover, current DCFC water reserves ensure the satisfaction of ordinary demands for a period of 15 months (late spring 2015). However, in the medium to long term, some action may be necessary in order to address structural improvements to ensure supply, in accordance with the water planning stipulations. The supply vulnerability in the Intercommunity Catalan Basins (CCI) is extremely low and therefore the intrinsic risk is negligible.

In the process of transition towards independence, the water system risk in Catalonia may also be determined by factors completely beyond rainfall levels, the state of water reserves in reservoirs, aquifer piezometric levels, desalinated water production and the volume of reused water. The attitude of the Spanish government in the exercise of its responsibilities for regulating and granting of water to the CCI could also aggravate this risk, although for operational, European legislation and international nuclear safety reasons, we consider this a minor and highly unlikely risk.

To reduce the risk exposure of the Catalan water system during the transition towards independence, the Catalan Government should be able to regulate the water supply system by means of such a regulatory mechanism such as the ACA so it can act as a water regulator in the interim.

There are two types of measures that should be taken into account:

Measures to reduce inherent risks in water supply during the transition period. These include assuming and exercising full powers in the management and control of water resources and resume supply activities as specified in the action programme: recovery of wells and aquifers, modernisation of DCFC irrigation systems and re-use within less than 20 km for water treatment plants.

A new 2016-2021 management plan and a new action programme should also be drafted. These should include the entire Catalan river basin and agreements relevant to the international management of river basins affected with Spain, Andorra and France, and establish interim agreements with Spain on water management and until the shared management of the international Ebro river basin is not negotiated, in accordance with the WFD. Similarly, optimal operation of the over 440 water treatment plants in Catalonia should be ensured.

Measures to prevent extrinsic risks stemming from Spain's non-cooperation attitude. Mediation or appeal mechanisms with the European Union should be explored should the CHE drinking water supply service, irrigation system or aquatic ecosystem maintenance be affected. Likewise, alternatives should be sought for finding water supply wherever possible: groundwater reserves, pumping water to irrigation canals, diversion of the Siurana to the Ebro, etc.

Once the new Catalan State is established, water planning should be defined with measures such as the following:

- Analyse and, if appropriate, amend tax law to resolve current water rate tax differences.
- Address whether the water cycle needs to be unified into a single legal framework.
- Pursue a water planning policy beyond 2027.
- Take into account the impact of climate change on the water cycle.

- Review the administrative operation of wastewater treatment systems and define the powers and responsibilities of local and supra-local in the management and operation of these systems.
- Resume sanitation efforts (improving water quality), to move forward in improving the quality of rivers and groundwater.
- Advance in environmental actions (improvement of aquatic ecosystems), taking into account the country's rivers (especially the Ter, Llobregat and Segre).
- Rethinking the use of the Garonne river area.
- Modernising irrigation systems, harmonising uses of the Segre and Noguera Pallaresa and reviewing the hydroelectric operation scheme.
- Foreseeing the possibility of water relief (for critical cases) from the Ter-Llobregat Water Consortium (ATL) to the Tarragona Water Consortium (CAT).
- Focusing investments in the most intensive distribution and treatment networks, and the treatment plants of the Intercommunity Catalan Basins. Addressing the modernisation of the Canal d'Urgell to improve efficiency ratings.
- Applying the European directive for improving the environmental status of the marine environment no later than 2020.
- Encouraging the promotion of public participation in decision-making about the management, regulation, planning, inspection and control of water in Catalonia.
- Anticipating and preventing the consequences for water supply derived from achieving the saturation horizon of the Barcelona Metropolitan Region (RMB). Analysing and evaluating possible alternative water supply measures in a long-term horizon (interconnection of urban water supply networks, new Foix and Tordera II desalination plants, Rhône transfer, connection between Segre and/or Ebro basin and coastal basins, and long-distance re-use (Besòs to Ter).

2.6.3 Communication and information technology

Modern societies, such as Catalonia, currently live in total dependence on technology. Everyday activities such as watching television, getting cash from an ATM, checking social media and making a phone call depend to a greater or lesser degree on information systems and telecommunications networks, what is called, generically, information and communication technologies (ICT).

Since they are key to normal society life, ICTs should be able to operate without significant problems, and this normal operation should be ensured exactly at the height of the constitution of the new Catalan state, which is why it is important to establish co-operation scenarios with Spain. In this area the adoption of the following measures should be considered:

- Coordinate with Spain the orderly transfer of ICT responsibility and ensure that at no time any power or contract be exposed to a situation of legal uncertainty.
- Create a legal/technical team to begin the process of preparing a draft law on critical infrastructures, including among other things, the definition from an ICT approach, the obligation of managing companies to create plans for disaster prevention and recovery, physical and cyber protection of facilities, co-operation with the Mossos d'Esquadra and/or security companies to ensure physical integrity and alignment with the national cyber security plan. Likewise, we should think about the desirability of establishing the role of a government representative in managing these companies in case of emergency.
- Create a legal/technical team to begin the process of preparing a draft decree whereby relations with Catalan radio amateurs to serve as a communication alternative in the event of disaster, in line with European regulations that allow for this.
- Start the preparation and drafting of a draft

law on electronic communications (telecommunications and broadcasting) to ensure legislative continuity in this area.

- Begin to prepare numbering and frequency plans that would correspond to the new state.
- In line with European regulations, assess the possibility of developing a law for the telecommunications regulatory body (currently the Telecommunications Market Commission, CMT) which in the new state would have to be the union of the CMT and the Broadcasting Council of Catalonia, as in other European countries.
- Start making international contacts with the international governing body of ICTs, the International Telecommunication Union (ITU). It would also be advisable to establish contacts with organisations such as the Internet Corporation for Assigned Names and Numbers (ICANN) and others in the industry that could help prepare the technical plans and legislation, as is common worldwide.

Broadcasting. As far as broadcasting is concerned, it should be noted that television and radio are essential services for citizens, but especially to generate a climate of normality. It is therefore very important to not interrupt this service.

In Catalonia, the radio and television signal reaches 85% of the population through the Collserola Tower and 8 major repeaters. For it to reach 99.6% of the population, 500 additional towers have had to be built.

In this area, coordination efforts should be made with Spain for the transfer of the radio spectrum for the Catalan territory, as well as the contracts and broadcasting rights of the various media groups, ensuring the safety of the audiovisual telecommunications infrastructure, such as the Collserola Tower, the 8 major repeaters and 500 towers scattered throughout the region, and begin drafting a disaster recovery plan.

Telecommunications. The vast majority of citizens have a mobile phone allowing voice communication and, in many cases, Internet connection. This technology is based on networks and antennas operated by private companies due to the liberalisation of the telecommunications market.

In addition, the Generalitat of Catalonia has a fiber optic network (XFOCAT), currently under implementation, which will connect most of its offices. Any surplus available from this network will be made available to operators for access in any town in Catalonia. Also, regarding the Internet, operators can exchange data with the “network of networks” through Internet traffic exchange points. Catalonia has CATNIX as an Internet data exchange point on the Internet, where all operators have access.

There is also a digital and encryption-enabled voice communication network called RESCAT, which is used for emergency service communication. This network uses the same network infrastructure as broadcasting (Collserola Tower, main repeaters 500 additional towers) to operate.

In this area the adoption of the following measures should be considered:

- Agree with Spain to maintain the +34 international prefix until Catalonia obtains its own international code.
- Protect the RESCAT network and create alternatives in the event of any disaster.
- Protect government communications, adopting appropriate protective measures regarding voice and data encryption at the appropriate levels.
- Deploy the fiber optic network in Catalonia (XFOCAT) as quickly as possible, especially with regards to the strategic backup points.
- Coordinate and develop a plan for the protection of wiring, voice and data facilities, mobile phone towers and Wi-Fi facilities, to protect them against disasters within the critical infrastructure legal framework. This plan should include protection against in-

terference and certification of security in communications to Catalonia.

Transport. Transport, whether road, rail, sea or air, is of crucial importance in ensuring normal life for people and also for tourists. Modes of transport rely, to a greater or lesser extent, on ICTs.

On the one hand, air and sea transport rely on electronic communications to communicate with port and airport infrastructures. Currently, all communications in these two transport areas are fully controlled by Spain. Everything seems to indicate that during the transition things would work with complete normality, given the strong dependence on international standards, the implications for user safety and the economic implications which a malfunction in these transport methods would entail.

On the other hand, rail transport depends on control centres for proper operation, since manual management would result in partial operations. Having this service stop would have effects on a large part of the population that uses it daily, and on the economy.

Finally, in terms of road transport, special note should be taken of road signage, which might stop working if there were a problem with the ICTs supporting the system. It should also be kept in mind that, increasingly, the logistics and merchandise distribution industry works with work order and distribution systems managed with information systems and, therefore, an ICT failure would endanger the related economic activities, for example food delivery to shops.

In this area, Catalonia would have to coordinate with Spain a transfer of assets associated to air, maritime and rail transport, and strengthen monitoring of information and communications systems and telecommunications installations in rail control centres and the Catalan Traffic Service.

Essential services. Currently, the government has significant amounts of citizen data

on file, which helps it manage the services provided pursuant to its attributable powers. These data include census, medical history, legal situation, tax data or academic qualifications of a person, among others.

Some of the information systems are owned or are under the control of the Generalitat of Catalonia or local authorities. But others are in the hands of Spain, and the Generalitat has access to consult records. We have detected that up to 150 software applications crucial to the Generalitat's operation require databases located in Spain's IT systems.

There are other important data that are not the government's responsibility: the financial data of citizens. This information is essential, for example, so that cash can be withdrawn from an ATM, provided that it is connected with the bank's head offices. The financial system is therefore based on proprietary information systems where data is stored and telecommunications networks that connect the various banks and ATMs with the head office. Protecting the financial system ICTs should be a priority in order to guarantee citizens' normal economic activity.

The universal postal service, "Correos" in Spain, is a service which all states offer citizens and which Catalonia would provide were it to become an independent state. Currently, the Generalitat does not have any control over the management of the postal service in the Catalan territory.

Emergency services are essential, and their proper operation affects other services such as telephone connection (in this case, 112), the operation of the voice communication RESCAT network and access to medical records, vehicle license plates and legal status of citizens.

Therefore, in order to guarantee public government services, postal services, financial services and energy and water supply, the state would have to coordinate with Spain the

availability of databases which Spain owns in order provide these public services in Catalonia, protect the public data of citizens of Catalonia and coordinate cybersecurity in order to

ensure smooth operation of all public and private services, including financial institutions, transport, energy, water, 012, 112, and any services essential to people's normal life.

3 The relationship between Catalonia and Spain, the European Union and the international community

3.1 Cooperation between Catalonia and Spain

Catalonia's geostrategic position within the Iberian Peninsula – extensively studied by geographers such as Pierre Deffontaines and historians such as Vicens Vives – and its long history as part of Spain have forged a very strong network of relations in all areas. Beyond the political bond, the following ties could be highlighted as examples:

- Demographic movements. Only during the 20th century, more than three million people born in the rest of Spain moved to Catalonia.
- Trade interdependencies. In 2012 Catalonia exported to the rest of Spain goods worth 49 billion euros – 34% of its production – and imported from the rest of Spain goods worth 26 billion (Interreg, 2013).
- Deep cultural ties. 50.7% of Catalans fourteen years and older identify Spanish as their personal “language of identification” (Language Policy Report 2012).

Furthermore, the globalisation process has extended these links to the rest of the world, particularly to the European Union, to which it belongs since 1985, i.e., for nearly thirty years. In this case, all sorts of exchanges and all types of cooperation have also been on the rise (only at the business level, in 2012 Catalonia exported 40.2% of its production abroad, while the rest of Spain exported 34%) (Interreg, 2013).

As a precedent for this progressive globalisation and the gradual disappearance of borders, particularly in Europe after the Second World War multiple forms of interstate cooperation began to emerge, even before the creation of the so-called common market. Right now, if we look at countries comparable to Catalonia in terms of population, terri-

tory or GDP – Austria, Belgium, Denmark, Finland, Ireland, Norway, Portugal, Sweden and Switzerland, and even the Netherlands – two are part of Benelux, four are members of the Nordic Council or the Council of the Baltic Sea States, one is a member of the British-Irish Council and eight are members of the EU. So while it is true that the state is still the key agent for political, social and cultural interaction, it is nevertheless clear that sovereignty is increasingly used to facilitate cooperation and not to ensure the protection of internal markets or isolation within a country's own borders. And, indeed, in view of the gradually lesser importance of traditional boundaries and the boost in interaction capacity, in the context of deepening common European policies involving transfer of powers – in currency, debt policies and soon in financial, labour and fiscal policies – we must consider very seriously if, going forward, formulas such as the federation or confederation of states, which is politically costly, might give way to these new models of cooperation between states, much more functional and efficient, aligned with the plurality of sizes and geographies, in a new paradigm that has been described as antiWestphalian.

Perhaps the reasons mentioned above explain that one of the most significant recent cases of agreed secession, the Czech Republic from Slovakia in 1993, posed no special problem whatsoever.

In parallel, then, with these close-knit relationship networks, and as a result of belonging and openness to other political, economic, cultural and knowledge spheres, the signing of treaties and agreements has led to an extraordinary blurring of the separating character of these old boundaries. Borders have

gone from separating– with closed and guarded checkpoints – to allowing a collaborative and interrelated cooperation. Treaties such as Schengen, the first signed in 1985 and the second in 1995 with the aim of ensuring the free movement of goods, services, capital, workers and travellers, have even led to a physical dismantling of the old police border checkpoints, in a short time. But especially European policies in favour of cross-border relations have multiplied co-operation projects and have significantly reduced the old barriers between states.

Seen from this perspective, then, the independence of Catalonia from Spain should not lead to insurmountable difficulties to reach a level of relation and exchanges similar to the present. This is especially the case if the negotiation does not question Catalonia's continuity within the EU. But even in the hypothetical case that Catalonia were left temporarily out of the EU, as long as the new Catalan state subscribed treaties such as Schengen and EFTA (European Free Trade Association), to European and international organisations and new networks and spaces beyond the EU, once accommodated to the new rules of the game, the exchanges between Catalonia and Spain would gradually flow back to what they have been until now.

Some technical questions will have to be solved, however, such as the possible dual citizenship for Catalans who do not wish to sacrifice their Spanish nationality. Other issues would be how to legally express the citizenship rights of current residents in Catalonia unwilling to avail themselves of the new Catalan nationality, or Catalans who do not live here now but who would like to have Catalan nationality. It will be crucial to find the best formulas for respecting national, cultural and linguistic minorities who would make up the hypothetical reality of an independent Catalonia. But it is obvious that in these matters we would find legal solutions in order not to violate individuals' desires, trying to accommodate the feelings of belonging not to hamper

the free movement of people, and especially to be exemplary in our regard to diversity and minorities.

Based on all this, we propose scenarios of substantive improvement and stronger forms of cooperation and less marked by suspicions than the current relationship. In this regard, we present cooperation models inspired by existing ones, which rather than closed models must be seen especially as an illustration of the new opportunities that the independence of Catalonia could offer.

It's worth remembering, finally, as has already been mentioned, that to understand the ambition of the types of proposals made, it must be understood that the national transition process, beyond the initial separation, should end up triggering a radical transformation in how each of the political nations – Spain and Catalonia – are conceived. Therefore, it should lead to an abandonment of old cultures rooted in an uneven relationship of imposition and submission.

3.1.1 Cooperation models. Iberian Council or Catalan-Spanish Council

Iberian Council. The first proposal is more ambitious, but for this same reason more defensible due to the intended inter-territorial cooperation objectives. The idea would be to propose the creation of an Iberian Council, fashioned after the Nordic Council, formed by the four states of the peninsula: Spain, Portugal, Andorra and Catalonia. The reasons for this alliance, apart from previous bonds of various natures, the common interests in all fields and the possibility of finding a formula for cooperation which would encourage these interests and reinforce each country's influence, especially within the EU. The Iberian Council, according to 2012 data, would include a population of over 57 million inhabitants and a GDP of 1.196 trillion, with a per capita GDP of above 21,000 euros.

The Iberian Council, following the model of the Nordic Council, may have the following structure:

- A Parliamentary Council, representing the respective parliaments of each state in approximate proportion to its population. The agreements would be suggestions which, to be effective, would have to be approved subsequently by each country's parliament and state governments.
- A Cabinet focused on intergovernmental cooperation constituted by the prime ministers or presidents of each state, although the minister for Iberian Cooperation would participate in ordinary sessions. The Cabinet would have a rotating presidency.
- A permanent General Secretariat.

Matters within its area of competence, which could be organised in commissions constituted *ad hoc*, could include the following:

- Environmental, energy and water policies.
- Law enforcement and defence policies.
- Cultural, sports and communications cooperation.
- Industrial, trade and financial policies.
- Agricultural and fishery policies.
- Infrastructure policies.
- Migration policies.
- Educational, health and research policies.

If we followed the example of the Council of the Baltic Sea States, we could consider the possibility of establishing a second level of association, defining an observer status with countries like Morocco and other territories – beyond the European Union – with whom establishing specific cooperation channels would be considered advantageous.

Catalan-Spanish Council. The second proposal is inspired by the old model – although renewed in 2008 – offered by Benelux, which unites three states, essentially in an economic cooperation agreement. It also takes into account, in part, the recent experience of the British-Irish Council, which allows forms of cooperation between states and regions through a flexible, asymmetrical formula. The idea

would be, in short, to propose the creation of a Council between the Spanish and the Catalan states, in order to find the maximum cooperation synergies between the two countries.

Institutional operation, also following the models mentioned, could be based on:

- a Cabinet made up of the permanent ministers of each country. The cabinet members would meet periodically and occupy the presidency on a rotating basis. The implementation of decisions taken should be approved subsequently by each executive.
- A consultative Interparliamentary Assembly, with members of both parliaments.
- Permanent Working Committees for each of the main areas of activity that have been established in the treaty, equally represented by parliamentarians from the respective parliaments.
- A permanent General Secretariat.

The Catalan-Spanish Council would be established through a treaty that would specify the functioning and powers and, logically, would comply with applicable legislation derived from common membership in the EU, if applicable. For example, the competencies and respective committees could deal with the following areas:

- Monetary and financial cooperation.
- Industrial and trade cooperation.
- Agriculture and fishery cooperation.
- Customs and tax cooperation.
- Cooperation in health, education and research.
- Cultural, sports and media cooperation.
- Environmental cooperation, particularly in energy and water.
- Infrastructure cooperation.
- Cooperation in defence and law enforcement issues.
- Cooperation on migration issues.

In a more daring, but also more comprehensive, model, we could try to follow the flexible model of the British-Irish Council and specifically accommodate certain regions in the

Council's Interparliamentary Consultative Assembly with representatives from each territory, always respecting the peer-to-peer, interstate character of the relationship.

3.1.2 Regional cooperation: the Mediterranean Arc

Although in a completely different frame from bilateral or multilateral relations between states, it is not possible to ignore precisely one of the most important regional cooperation spaces: the so-called Mediterranean Arc. As noted, economic boundaries no longer align strictly within states. There are currently networks between points that do not necessarily have a physical continuity, and there are urban corridors that become engines of economic development and technological innovation.

This arc corridor is already a *de facto* reality, from the point of view of economic cooperation. And if it has not developed all its potential, it's precisely because of Spain's objections to duly promoting the development and addressing the needs and opportunities of transport infrastructure, especially land transport. Moreover, this Mediterranean corridor has been promoted by civil society, mainly by the Ignasi Villalonga Institute, through the creation of the Mediterranean Arc Euroregion,

EURAM. It has been repeatedly requested by FERRMED, a business initiative established in Brussels in 2004, particularly with respect to the connection of ports, airports and rail.

There are also public structures within this space, such as the Pyrenees Working Community and, more particularly, the Pyrenees-Mediterranean Euroregion. However, it seems that the states to which these regions belong are not keen to give them the support they would need. Very specifically, it would include projects such as Cerdanya Cross-Border Hospital, involving the Generalitat of Catalonia (Government of Catalonia) and the French Government, and the Pertús Police and Customs Coordination Centre, with the participation of French, Spanish and Catalan police.

This type of macro-regional approach is the priority right now in the European Union. In view of the success of this type of macro-regional development policies, a space such as the Mediterranean Arc, which would run from Eastern Andalusia, through Murcia and Alicante all the way to Lyon, must end up becoming a key framework for cooperation strategies between Catalonia and its neighbouring states. This type of co-operation, as stated above, not only does not require the signature of international treaties but allows countries to take part without even being part of the EU.

3.2 Trade relations between Catalonia and Spain

The Catalan economy has experienced a very intense process of diversification in its exports. This process has been non-stop since Spain became a member of the European Economic Community, and in recent years it has increased in intensity due to the sharp decline in domestic demand caused by the economic crisis. This process will continue in the coming decades, due to the gradual disappearance of traditional factors (autarkic markets, established business relationships and centralized communications and transport, among others) which explain the ongoing vitality of domestic trade.

In this context, public debate related to the effects of independence on trade relations between Catalonia and Spain has led to the publication of reports and studies of widely differing quality. One of them, the report by the Spanish Foreign Ministry, is perhaps the best representative of those that paint a doom and gloom scenario, based on systematic and large-scale boycotts of Catalan products, sudden and dramatic disappearance of the no-border effect between Catalonia and Spain – built up over a long time – and large-scale EU reprisals against trade with Catalonia. The conclusions of this type of doom scenario reports are unrealistic. They don't hold up when compared with international precedents and reveal technical errors, such as confusing export turnover with gross domestic product.

Trade relations between Catalonia and Spain could experience, at a much smaller scale, a setback due to a possible independence of Catalonia, which would in turn suddenly accelerate Catalonia's process of foreign trade diversification. A selective and symbolic boy-

cott of affected products is likely, but would be short-lived. In fact, it has been common in the past. And a progressive dilution of the border effect is natural in a global economy, which has long since taken place in practice. We must remember, first, that the effects of a hypothetical independence of Catalonia on trade relations with Spain are more intense in final or consumer products than on intermediate or capital products (and the latter account for two-thirds of Catalan exports to the rest of Spain); and secondly, that Catalan exports have been taking place using intermediate products imported from the rest of Spain and abroad.

Considering all these factors, the hypothetical loss in Catalan GDP in the short term associated with the drop in trade with Spain would very likely be around 1%, very unlikely to exceed 2%. In any case, it would be largely offset by the disappearance of the fiscal deficit (which during the 1986-2010 period, on average, accounted for 8.1% of GDP).

And even so, in the long term, the capacity of Catalan exporters to innovate and compete would be much more important, coupled with public policies implemented by the new state to facilitate productive activity, some applied with short-term effects and others with longer term effects (investment and infrastructure management policies based on fostering productivity, education system reforms, etc.).

Especially in the transition period, Catalan authorities could adopt some measures to prevent some of the potential effects of the change in situation. These could include, for example, cooperating with consumer product sectors of clearly determinable origin and end

with certain symbolic value, which would (as they have been historically) most affected by selective boycotts, to improve their expansion to other markets by means of trade promotion and other instruments.

3.3 Cooperation between Catalan-language territories

The areas where Catalan language use and the creation and expression of Catalan culture takes root and develops – as is common in other languages and cultures – does not exactly match up to political and administrative territorial divisions. It is for this reason that, as is likewise the case with other language and cultural regions around the world, in the territories where the Catalan language and culture exist – and among people who use them, practice or study them, wherever they may be – traditional organisations have emerged in order to ensure the exchange and cooperation between regions and individuals, with a view to ensuring their survival, development, knowledge, promotion and mutual benefit.

In the European context, the remarkable cooperation treaty between Belgium and the Netherlands for the Dutch Language Union (Nederlandse Taalunie) has long been regarded by experts as a good model to follow. The Nordic Language Convention also stands out. It is a specific body of the Nordic Council that, although comprising different languages, establishes policies relevant to cultural cooperation. And in a yet more general context, the International Organisation of La Francophonie (Organisation Internationale de la Francophonie) is also well-known.

With the exception of some formal declarations, Spain has proved reluctant, in all areas, to underscore the value and recognise the wealth of the cultural and linguistic diversity within Spain. In practice, Spanish state policies have focused almost exclusively on promoting the Spanish language and culture through the creation of the Instituto Cervantes, which has received strong support.

To address this gap in support from the central government's public institutions, a host of private organisations have existed for years to try to meet the needs of this sector. These include the classic Galeusca association, in defense of the Galician, Basque and Catalan languages, and professional associations that are not limited to administrative territories such as the Association of Catalan Writers, and supranational bodies such as the Xarxa Vives d'Universitats (Vives University Network). The Institute of Catalan Studies deserves special mention, for its history and academic significance, and for the peculiarity of its legal identity and its role as a linguistic authority.

Catalan public institutions have also attempted to address this cooperation, despite formal obstacles. One of these obstacles is the fact that the Spanish Constitution bans the federation of autonomous communities and imposes limitations on the relationship between regions (Art. 145.1), the forms of cooperation which should be established in the respective statutes (as contained in Articles 12 and 178 of the 2006 Statute of Autonomy of Catalonia, Article 59 of the 2006 Statute of Autonomy of the Valencian Community and Articles 5, 35, 118 and 119 of the 2007 Statute of Autonomy of the Balearic Islands), cases which must receive, in addition, authorisation from the Spanish Parliament. Moreover, beyond the legal obstacles, the political execution of linguistic and cultural realities have represented a significant added difficulty.

The Generalitat of Catalonia, specifically or as a body, has promoted the creation of public agencies with the aim of formal cooperation between autonomous communities. The Ra-

mon Lull Institute in one such agency, which aims to promote the Catalan language and culture outside our borders in all the territories that share it and that, indeed, earned the support of the government of the Balearic Islands since the beginning in 2002 until support was withdrawn in 2012. Some Valencian municipalities, on the other hand, have gradually shown interest in participating. The inter-state Ramón Lull Foundation has been established in Andorra, and it works in close co-operation with the Ramon Lull Institute on behalf of the study, promotion and defense of the Catalan language and culture.

Regardless of the above, in the framework of an independent Catalonia, sacrificing these territorial cooperation areas between institutions, organisations and individuals in the field of language and culture, beyond administrative borders, would make no sense. But more than that, the new political status should become a great opportunity to make a reality what so far has proved to have obvious implementation difficulties.

3.3.1 Criteria and proposals

First, we should establish clear criteria on which we should build cooperation in the field of language and culture, given that apart from a territorial definition, these are realities that transcend physical materiality of space and spread across administrative borders. These criteria could be the following:

- It would be worthwhile to clearly distinguish between political and cultural logics, each of which would have perfectly outlined, differentiated areas. On the one hand, there is the political community, with clear administrative boundaries, and on the other, the various linguistic and cultural communities (by their very nature, with poorly defined boundaries), which extend past the administrative space. In this sense, the Catalan state would have to address, in the first place, the linguistic and cultural rights of all its citizens in all

their diversity, actively involved in organisations promoting these languages and cultures.

- Simultaneously, a proactive attitude should be adopted with respect to the protection and promotion of the autonomous Catalan language and culture, maintaining existing collaborative bodies – or proposing new ones – and making them available throughout the language and cultural region.
- Although this issue would hinge on the general framework of relations between Catalonia and Spain, and taking into account that the underlying principle of co-operation should always be one of reciprocity, in terms of Spanish language and culture, it would be desirable to establish links, for example, with the Cervantes Institute to serve the interests of the Spanish-speaking community.
- The same would apply with other cultural and linguistic communities in Catalonia. Thus, due to proximity and tradition, the French-speaking community from France or African countries – a very large 15% of the Catalan population speaks French – or due to the interests stemming from intense trade relations, it might be desirable for Catalonia to join the International Organisation of La Francophonie.
- Any organisation in favour of cooperation between Catalan language and/or culture territories should be very scrupulous in respecting the wishes and specifications of each participant. Obviously, political sentiment cannot be forced, and any formula would have to be agreed beforehand.
- It would be essential for the various forms of cooperation to put the emphasis mainly on common interests, and particularly in the defense and promotion of a common cultural and linguistic market that would benefit everyone, regardless of where the goods being exchanged are produced. To take an example from another field, particularly favourable conditions could be established for exchanges in the edu-

cational – especially at the university level– research, health and communication areas, where currently there is already a close-knit relationship and where it would be appropriate for the new political status not to entail such a difficulty for continuity. In this regard, it would be appropriate to avoid stressing identity or political issues to avoid causing the traditional reluctance.

- Obviously, all possible projects should operate within a European framework, from the regulatory point of view as well as from the point of view of the models offered.

Consequently, at least two proposals can be presented for the creation of new agencies and the reform of existing ones.

3.3.2 Proposal to create a Catalan Language Agreement

It would be advisable to create a public agency for cultural and linguistic cooperation between states with territories where the Catalan language is used in any of its names and variants.

Following the proven model of the Dutch Language Union, this Agreement – although it could otherwise be named Alliance, League, Consortium, Union or even Coalition, to use the term adopted by the UNESCO for cultural diversity promotion – should be the result of a treaty signed between the five states (Andorra, Spain, France, Italy and Catalonia). In Spain – as in the case of Belgium with its Union – representation may be transferred to what are now the autonomous communities of Valencia, the Balearic Islands, and Aragon. In France, representation could fall to the General Council of the Pyrénées-Orientales, and in Italy, the city of Alghero.

The Catalan Language Agreement may consist of:

- A Government Committee, comprising high-level members, responsible for the cultural affairs of respective governments

– one for each territory – which would propose the cooperation policies in terms of language and culture, which, to be effective, would have to be subsequently adopted by governments in each administrative area.

- An Inter-Parliamentary Commission that would study the proposals of the Council of Arts and Culture and, if appropriate, would take them to the Government Committee.
- The Philology Section of the Institute of Catalan Studies would continue in its role as Linguistic Authority, in a technical capacity. It would ensure, as it has until now, that experts from all Catalan-speaking territories are represented.
- A Council of Arts and Culture, with the participation of experts, creative professionals and producers, as well as public and non-governmental organisations for the defense and promotion of the language and culture.
- A General Secretariat.

Funding could be flexible according to the number of speakers in each region. The main objectives of the Catalan Language Agreement would be:

- Cooperation in the study, knowledge, dissemination and proper use of the Catalan language in its variants.
- The promotion of Catalan literature and all forms of cultural creation expressed in this language.
- The promotion of a true and efficient Catalan language and culture market in all the territories involved.

This Catalan Language Agreement is a lofty aspiration, which is why it might make it advisable to take a phased approach to its implementation, starting with the creation of the Council of Arts and Culture. As it matures, over time, it may eventually culminate in the signing of the final treaty between the states involved.

3.3.3 Consolidation of the Ramon Llull Institute

It would also be advisable to consolidate the Ramon Llull Institute as a great instrument for projecting the Catalan language and culture throughout the world, which is one of its founding principles.

So, whenever possible, it would be interesting to agree the participation of governments of

all the territories where the Catalan language and/or culture is present. That is, in addition to Catalonia, Andorra, the autonomous communities of Aragon, Balearic Islands and Valencia, the Pyrénées-Orientales and Alghero. Needless to say, this consolidation would be easier with a Catalan-Spanish Council or Iberian Council as proposed above, and if a treaty on the Catalan Language Agreement were signed, as suggested.

3.4 Paths to Catalonia's integration in the European Union

Whether a future Catalan state would be inside or outside the EU is open to a variety of opinions which can be grouped into the four scenarios presented below. In all cases, it is necessary to emphasise two important ideas. First, preserving the acquired rights of citizens is crucial, their economic and social rights and especially the rights specified in the EU's Charter of Fundamental Rights. And secondly, it is important to take into account the complexity of organising the process of leaving the EU for all public and private actors, whether individuals or legal entities. These are the four scenarios considered:

EU member scenario: As soon as the new Catalan state is established and the EU is notified of its constitution, the new state continues as part of the Union without interruption. Since it is a territory that is now part of the EU and its population has European citizenship and is under European law, it would not be forced to leave the EU and apply for re-integration from the outside.

Ad hoc membership scenario: When Catalonia requests admission, the EU would not accept its automatic continuity in the EU as a new state, but, given the specific circumstances of the case, it would decide to undertake a process of *ad hoc* membership, with specific characteristics that would enable quick integration and a transitional arrangement aimed at ensuring the continuity of as many legal, economic and political ties to the EU as possible, and the continuity of all rights and obligations of citizens and companies operating in Catalonia.

Ordinary membership scenario: The EU agrees to immediately open an ordinary mem-

bership process as a third state without taking *ad hoc* measures aimed at ensuring expedited processing or establishing specific interim arrangements.

Exclusion as a Member State scenario: The EU refuses to immediately open the membership process or granting candidate status, i.e., it refuses to open the formal membership procedure and the new state remains indefinitely outside the EU.

Two assumptions must be taken into account when analysing the degree of legal and practical feasibility of these four scenarios.

- First, neither international law nor EU law expressly provide for a situation such as the Catalan case would pose.
- Secondly, the EU has traditionally adopted an extremely flexible and pragmatic attitude when solving unexpected problems that have emerged in relation to the territorial organisation changes of Member States concerning the scope application of EU law and, more generally, in relation to the treaty ratification process.

However, these two assumptions do not allow us to conclude that the admission of a new Catalan state would operate in a legal vacuum. EU law, and indirectly international law, regulate a number of material and procedural requirements and conditions that this future state must comply with in order to join the Union, whatever scenario ends up prevailing. However, as we shall see, the unprecedented nature of the Catalan case will increase the margin which the EU usually takes when selecting, interpreting and applying European law. In practice, whether acknowledged or not, the driving force behind choosing be-

tween these scenarios is not so much legal guidelines as much as political and especially economic interests.

3.4.1 Legal conditions and requirements

EU membership is open to European countries which respect and promote the values of human dignity, freedom, democracy, equality, the rule of law and human rights, including the rights of minorities. Countries must also meet the criteria set out by the European Council's Copenhagen Summit: existence of a functioning market economy and the capacity of coping with competitive pressure and market forces within the EU; capacity of accepting the aims of the political, economic and monetary union and institutional stability to ensure democracy, the rule of law, respect for human rights and protection of minorities.

It seems clear that a future Catalan state would suitably meet these admission conditions and requirements. Proof of this is its prolonged prior EU membership.

The major new requirements that the new Catalan state would have to deal with would result from the need to create some regulatory and coordination agencies, which have already been discussed, and, in general, some new organisational structures stipulated by European law, as well as the need for transposing to the new Catalan legal system any related EU law as required. These tasks would certainly require some effort, but the future Catalan state would have enough experience to deal with them without much difficulty.

For a future Catalan state to join the EU does not necessarily require it to be previously and formally recognised as a state or accepted internationally by another state or by specific international organisations, for example the UN or the Council of Europe. The EU could be the first organisation to recognise this fact. However, there is no doubt that the prior formal recognition by other states or international

organisations could facilitate the EU integration process.

3.4.2 Membership scenarios. Procedures to be followed

EU member scenario. Should Catalonia and the EU choose for Catalonia to remain in the EU, which would no doubt be in Catalonia's best interest, the following procedures should be followed:

First, the Parliament of Catalonia should adopt a resolution specifying its explicit desire to continue in the EU. The decision should stipulate a commitment to European values and ideals. It should also demonstrate the new state's compliance with the EU's political, legal and economic requirements for Member States. And, finally, it should refer to the objective of carrying out, in the specified time period, any adjustments required to remain part of the EU.

The President of the Generalitat, in his capacity as ultimate representative of new state, would be responsible for submitting this decision expressed by the Parliament to the European institutions.

The most appropriate EU institution to respond to Catalonia's request to continue being part of the EU would be the European Council.

If it ruled in favour of this option, the European Council, by consensus, would respond favourably to Catalonia's continuity as part of the EU. Once this agreement is adopted and, therefore, once Catalonia's permanence within the EU is accepted, a negotiating process would begin to adapt the primary legislation and secondary legislation to the presence of a new member within the European Union, and to specify the internal adaptations Catalonia should carry out to remain as part of the EU.

Although the changes to be carried out may be few and limited in scope, they would have

to be recorded via an amendment of the EU Treaties.

The amendments of the Treaties should be made preferably by way of ordinary revision procedure of Article 48 TEU (sections 2 to 5).

The ordinary revision procedure of the Treaties may be initiated by the government of any Member State, the European Parliament or the Commission, by submitting a draft revision of the Treaties to the Council which submits it to the European Council and notifies national parliaments (art. 48.2 TEU). The European Council, by a simple majority, after consulting the European Parliament and the Commission, decides whether to start the amendment process. If it decides to do so, it orders the Council to convene an Intergovernmental Conference (Conference of State Government Representatives). This Conference must approve, by mutual agreement, the amendments to be made to the Treaties. And finally, the amendments must be ratified by all Member States.

The procedures, which takes into account the desires of EU institutions, are characterised by their flexibility to the extent that, on the one hand, no overly qualified majorities are established for adopting decisions to be adopted by European institutions, and, on the other, mechanisms are put in place to address possible situations involving opposition or blocking by a member state (Article 48.5 TEU).

The amendments to be introduced would also be limited in scope and would be introduced by modifying the relevant directives and regulations in force.

As for the adjustments that Catalonia would have to carry out to continue being a part of the EU, some have to do with the agencies it would have to create or adapt and others involve the required legislation to develop and implement European law and indispensable interim arrangements. It seems clear that these adjustments would have a limited scope

and relevance compared to what happens with applicant states that have not previously been members of the EU.

To ensure the practical effectiveness of the recognition of permanence in the EU, from the moment the European Council recognises the permanence and during the process in which Treaties are amended and secondary legislation and national law is modified, the EU, in keeping with its traditional flexibility and pragmatism, could adopt measures to ensure this immediate applicability.

These interim measures aimed at ensuring the practical effectiveness of recognising the permanence of a future independent Catalan state within the EU would not be necessary if the procedure which was going to be applied in the Scottish case to ensure its permanence in the EU were applied in the Catalan case. Indeed, this formula aims to achieve concurrency between the constitution of the new state and the integration of this state in the EU and, applied to the Catalan case, would consist of the following: After an eventual favourable outcome for independence following a referendum or plebiscite election, and after prior negotiations between the Generalitat and Spain, the latter would start negotiations with the EU in order to design (for whenever the new state is formally established and it expresses its desire to continue in the EU) the appropriate amendments to the original treaties – which in principle should take place through the procedure stipulated in Article 48 TEU – and the modifications of secondary legislation deemed necessary for the integration of the new state. By this time, the list of organisational and legal measures to be implemented by Catalonia in a given period should also be ready.

Ad hoc membership. If, however, Catalonia and the EU chose the *ad hoc* membership scenario, this would mean that the integration of Catalonia in the EU would take place through the procedure used for non-member third countries (art. 49 TEU), with the excep-

tion, however, of the simplifying *ad hoc* interim measures adopted, aimed at ensuring fast integration. This would imply that most of the currently European law in effect would continue applying to Catalonia throughout the process.

In short, in this scenario the future Catalan state would be required to leave the EU, but its reintegration process would be streamlined. It should be noted that, depending on the speed of this *ad hoc* process and based on the content and extent of the interim arrangements, in practice, the consequences of this EU integration procedure for the future state could be objectively almost identical to the first scenario.

As amply demonstrated by the practice followed so far by the EU, Treaties contain many different conventional and regulatory instruments that would accommodate a rapid integration procedure and, especially, *ad hoc* transient regimes: protocols, cooperation agreements, provisional application of European Treaties to the territory of Catalonia until the end of the *ad hoc* membership procedure; provisional application of the new Accession Treaty from the moment it was signed, while the accession Treaty was being ratified by Member States; adoption of the decision of heads of state within the European Council, etc. Meanwhile, in this transitional period, Catalonia could adopt unilateral measures and legal decisions to ensure the maximum stability of trade relations with the EU and enjoy freedom of movement. Regardless of the above, even in this case, for the duration of negotiations for accession, interim measures to facilitate continuity of application, even if only in part, of European law could be adopted. In fact, the application of interim arrangements is common in most accession processes.

The procedure outlined in Article 49 TEU, if we extract the modifications that the EU could apply to a case such as Catalonia's, would begin with a request for admission addressed to the Council, which would have to accept

it unanimously after consulting the European Commission and the European Parliament. If so agreed by the Council, a process of negotiating of uncertain duration would begin, even though, objectively, it would seem that it should be shorter than the process followed to date with other candidate countries, precisely because the provisions of primary legislation and secondary legislation require more limited changes and because fewer requirements are expected for Catalonia.

This process would be applied through the legal instrument of the Treaty or Act of Accession of Catalonia to the EU, which should incorporate the principles governing membership, institutional adaptations, secondary legislation technical adaptations, interim measures in the various areas of application and Law application provisions.

The procedure normally applied in this phase is usually as follows: the Commission directs the negotiations and duly informs the Parliament and the Council. The terms agreed in relation to the various negotiating chapters are specified in the Accession Treaty. Before it is signed, the European Parliament must issue its approval, adopted by an absolute majority of members and the unanimous resolution of the Council.

Finally, these Treaties amendments are subject to an agreement between the Member States and the candidate state. The Accession Treaty has to be ratified by all Member States and also by the candidate state, following the respective internal constitutional guidelines. Unlike the procedure of Article 48 TEU, the EU does not stipulate any response mechanism in the event of a possible deadlock.

Ordinary membership. The third scenario, ordinary membership, would mean ignoring the fact that Catalonia has been part of the EU for almost thirty years. It would therefore place Catalonia in the same position as official candidate states such as Iceland, Turkey, Macedonia, Montenegro and Serbia. In the case

of Catalonia, this option would have a clear disciplinary or deterrent component, which would be even clearer in the fourth hypothesis, the exclusion scenario.

Exclusion scenario. Many doubts and questions could emerge in this exclusion scenario, which would imply the EU's refusal to accept any kind of relationship with Catalonia.

So, for example, assuming Spain did not recognise the independence of Catalonia, this could prevent changing the scope of application of EU Treaties in Catalonia. The result would be continuity in the implementation of European law in Catalonia and to Catalans, even in the event that Catalonia declared its independence and begun to act as an independent state.

From a procedural perspective, it is very arguable that Article 50 TEU (introduced by the Lisbon Treaty) would be directly applicable in the event of deadlock in the procedure to admit Catalonia into the EU. Strictly speaking, this article applies only in the case of voluntary withdrawal of a member state from the EU. However, regardless of this debate, it is significant that this provision requires negotiations prior to the exit of a Member State, setting the framework for future relations with the EU and giving a margin of two years before it ceases to apply European law. Article 50 TEU underscores the great complexity – both for the affected area and for the EU as a whole – involved in having a territory (which has been part of the EU for a given period) leave the EU.

3.4.3 EU flexibility and pragmatism

When considering the possible EU scenarios, we cannot ignore that the EU has traditionally adopted a flexible and pragmatic approach to complex issues for which the Treaties did not present a clear answer. This flexibility and pragmatism have been an EU hallmark since its beginnings until now. Suffice it to recall, for example, that the first change of boundaries

that took place in the framework of the European Coal and Steel Community (ECSC) in 1957, when the region of Saarland went from France to West Germany, without requiring any renegotiation of the ECSC Treaty.

Greenland is another relevant example of pragmatism, in this case in relation to the reform of the territorial scope for application of the Treaties. In 1979 its citizens had obtained a political autonomy regime within the Danish state and in 1982 they voted to leave the European Communities. After a period of negotiations, Greenland won the status of European Communities associate member through the “countries and overseas territories” formula. The agreement allowed Greenland to continue receiving EU funds and having free access to the European market for fishing products. The Greenland case was the result of a political process not provided for in any article of the Treaties.

The European Community also demonstrated the same pragmatism and flexibility with regard to the process of integrating unified Germany in the European Communities. In April 1990 the European Council decided that the integration would be effective when the unification of West and East Germany was legally established, and thus ruled out any application of the accession or revision clauses in the Treaties. It was a fast political negotiation in which the Member States ratified the conditions whereby the process of absorbing the new territory, its citizens and its businesses by a EU member state would take place, applying the principle of people's right to self-determination provided for in the basic Law of the Federal Republic of Germany to justify the reunification of Eastern and Western Lands.

The case of Cyprus is also paradigmatic. In 2004 it became a member of the EU as a de facto divided island. Unable to reach an agreement between the Turkish Cypriot and Greek Cypriot sides, the decision was made to make the whole island a member of the EU,

but that EU law would apply only to the Greek Cypriot side.

Another example that highlights the EU's pragmatism when faced with complex situations is the decision taken at the EU Council on the opening of negotiations to conclude a Stabilisation and Association Agreement with Kosovo. In the debate between representatives of Member States in the EU Council, in order to avoid having all EU Member States ratify the agreement and, ultimately, to prevent states who had not yet formally recognised the state of Kosovo from voting on the ratification, the Council agreed by consensus that the future agreement would not be signed as a mixed agreement (EU and Member States) but would only be signed by the EU. That said, the current project affects some powers which are questionably exclusive only to the EU.

The EU's flexibility and pragmatism could be even greater in the case of Catalonia, where, given its prior membership in the EU and the lack of express regulation affecting it, applicable laws leave an even higher degree of freedom than other cases.

3.4.4 Probabilities of application of the various scenarios

Both EU institutions and Member States have a wide margin of freedom when it comes to accepting or not the inclusion of a new state, and if accepted, when deciding which scenario and what procedure should apply.

The reasons which states and European institutions can appeal to when adopting one position or another are not explicit or stipulated by law. In principle, they can be of any kind (legal, political or economic, etc.) and the likelihood that the EU and Member States opt for one or another of the four scenarios noted above will depend largely on the persuasive force which the various arguments have for them – especially economic arguments – for admission or ongoing membership. The arguments likely to prevail are those aligned with

the EU values and objectives and those taking into account the economic and stability interests throughout the EU.

Along these lines it is likely that the arguments against the ongoing membership or fast admission with interim agreement scenarios will resort to arguments about the “absorption capacity” of the EU, namely the difficulties of managing a Union with the addition of a new state, or the fear which some European countries who are facing territorial issues might have that the Catalan case may trigger a “copycat effect”.

Claims have also been made, with debatable reasoning, that the acceptance into the EU of a future independent Catalan state, if the separation process occurs without agreement from Spain, would be a breach of the principle of territorial integrity stipulated in art. 4.2 TEU. The claim is that a future Catalan state would not have been a contracting party to the Treaties establishing the EU and, therefore, should apply for admission as if it were a third-party state, outside the EU.

Moreover, the arguments that can be leveraged in favour of the ongoing membership or fast acceptance scenario stage with an interim arrangement are arguments related to the values that the EU has always defended, and also pragmatic.

First we will consider the values that the EU has always defended. One of the foundational objectives of the EU has always been to achieve the maximum integration of states geographically located in Europe. It would be going against its own objectives and nature to exclude, even temporarily, a state such as Catalonia, who meets all the admission requirements and which is actually already part of the EU.

It is also worth remembering that to deny EU membership to a future Catalan state, or prolonging this integration process, would amount to excluding 7.5 million people from

EU membership, people who have enjoyed this status for decades. In fact, the principles and values guiding the EU will prevent its institutions from ignoring the rights of people and companies, maintaining financial and commercial relations and, especially, the rights stipulated in the EU's Charter of Fundamental Rights.

From a strictly economic standpoint, it seems clear that the permanence of a future Catalan state in the EU or its speedy acceptance with interim arrangements would offer more advantages to the EU and current Member States than a definitive expulsion or an acceptance by ordinary means after a long wait. The EU, Member States and especially investors and companies from these states with industrial and financial interests in Catalonia would be negatively affected by the failure to apply to Catalonia the Statutes and laws of the EU, the re-application of customs tariffs and the withdrawal of freedom of movement from people, goods, services and capitals. On the other hand, it is worth remembering that, according to current calculations, a future Catalan state would not be a "receiving" state but rather a "net tax contributor" to the EU budget. This factor is usually taken into account in acceptance negotiations.

The above considerations allow us to conclude that when it comes to deciding the acceptance of an independent Catalonia in the EU and the procedures to be followed, it is likely that, for the EU and its Member States, the arguments in favour of ongoing membership or at least fast acceptance with interim arrangements would carry more weight. If this proved to be so, it also seems clear that, from the standpoint of basic pragmatism, the arguments in favour of ongoing membership (first scenario) should be stronger than arguments for fast acceptance with interim arrangements

(second scenario), since it does not make sense to force a territory and citizens out of the EU even if they were to be quickly re-accepted.

It does not seem reasonable or credible that the EU and its Member States would be willing to inflict financial damage and betray their foundational objectives by leaving a state such as Catalonia out of the EU, a state which would meet all membership requirements and which is perfectly integrated to Europe. The dilemma then is actually not if Catalonia would end up being part of the EU but when and how it will do so. The most basic logic and pragmatism would seem to point to its ongoing membership scenario. However, in the event of a sanction veto, a scenario of fast integration with interim arrangements cannot be ruled out, which would ensure uninterrupted application European law in Catalonia for the duration of the accession process.

At the same time, it seems obvious that if Catalonia carries out the segregation process with the agreement of the Spanish state, it would have no difficulty in ensuring its ongoing membership in the EU or by *ad hoc* fast acceptance with interim arrangements. However, it also seems clear that if this agreement did not exist but Catalonia could prove irrefutably that the agreement has been attempted repeatedly and in good faith with Spain, and it has exhausted the application of the relevant legal channels following a scrupulously democratic process, the EU and its Member States would not be indifferent to this fact.

In fact, in the absence of an agreement between Catalonia and Spain, European institutions have to analyse the behaviour of both parties in the light of the principles of democracy, sincere cooperation, good faith and proportionality.

3.5 Alternatives to non-permanence of Catalonia in the EU or to a prolonged accession process

3.5.1 Bilateral agreement between Catalonia and the EU

This type of agreement could be established in two ways. Firstly, Catalonia and the EU could decide unilaterally but reciprocally not to impose duties on the circulation of goods manufactured and commercialized in their respective territories. Secondly, the two entities could sign a bilateral agreement to guarantee the free trade of products and services, as well as to define a common framework for cooperation.

On the basis of its external competences, the EU enters into a broad range of international agreements with third states that are not EU Members and with international organisations. The agreements that are signed are usually of the following types: trade agreements, association agreements and cooperation agreements. The Lisbon Treaty facilitates the process of closing bilateral EU agreements, that is to say agreements closed exclusively by the EU and not by its Member States. Moreover, this Treaty has modified the voting system in the Council to facilitate the decision-making process by qualified majority, replacing the qualified majority system established in the Treaty of Nice (a majority of States, weighted votes and population) with a double majority system (States and population) that does not require votes to be weighted but establishes a qualified majority of 55% of Member States (currently 15 States) and 65% of the European population.

In the case of Catalonia, it would be necessary to assess the possibility of extending the adoption of an agreement on trade, cooperation and association with the EU as far as pos-

sible, with decisions being taken by qualified majority.

As such, the EU and Switzerland, for instance, have a large number of bilateral agreements which enable the latter to enjoy the benefits of the single market without being an EU Member, while, at the same time, retaining a high degree of economic and political independence, particularly in terms of the economy, taxation, trade and agriculture.

3.5.2 Membership of the EFTA, the EEA and the Schengen Area

Another option for the independent Catalan State would be to apply for admission to the European Free Trade Association (EFTA) and inclusion in the numerous agreements with third countries that have been signed within this framework. The current members of the EFTA are Iceland, Liechtenstein, Norway and Switzerland. The treaty covers the areas of free circulation of people and services, movement of capital and protection of industrial and intellectual property. The EFTA is not, therefore, a customs union, but rather a free trade area and members have a certain measure of freedom to close free trade agreements of their own. To become a member of the EFTA, a unanimous agreement must be reached by the Member States.

Catalonia's participation in the EFTA would mean having to make a smaller economic contribution than would be required to the EU, which would give the State great freedom in terms of negotiating economic and trade agreements. In view of the characteristics of Catalonia, there would not appear to be many obstacles to its membership of this organisa-

tion. In fact, there is a preference within the organisation for the inclusion of small or medium-sized States with a similar level of development and the will to open up to foreign trade. Catalonia already possesses these characteristics.

With the exception of Switzerland, the other three members of the EFTA (Norway, Iceland and Liechtenstein) are party to an association agreement with the EU to form the European Economic Area (EEA). The EEA forms part of the Community acquis on the internal market and some European policies such as free competition, a series of social regulations, consumer protection and a set of environmental measures. It also incorporates cooperation instruments in areas of research, development, tourism and civil protection.

In order to gain membership of the EEA, a State must first be a member of the EFTA. The countries involved in the EEA apply EU rules on the internal market and enjoy the corresponding economic freedoms without taking part in decision-making processes at an EU level.

Meanwhile, all EFTA members also form part of the Schengen Area, an area in which internal border controls have been eliminated and European Community rules are applied with respect to the control of external borders. The Schengen Area currently consists of 26 countries (soon to be 28 with the accession of Romania and Bulgaria). Four EU states do not belong to this agreement (Ireland, United Kingdom, Cyprus and Croatia). Forming part of the Schengen Area may be in Catalonia's best interests, but this is even more so in the interests of the other EU members and for the EU itself, in view of the enormous concern re-

lated to ensuring the security of external borders in order to control illegal immigration, organized crime networks, drug routes and all types of corrupt practices.

Even if it is not a member of the EU, Catalonia could still be a member of the Schengen Area, particularly if it were a member of the EFTA. However, Catalonia would first have to meet a series of requirements. Firstly, with respect to external borders, it would have to demonstrate to the other members, for example, that it can implement efficient control of its borders and the proper application of the Schengen regulations. Moreover, it would have to demonstrate effective management of the different databases that have been set up for the control and integrated management of external borders and implement the corresponding instruments for cooperation with the different European agencies related to the operation of the Schengen system.

3.5.3 Free trade agreements and customs unions

In the event of obstructions to Catalonia's rapid entry into the EU under an interim regime, an alternative internationalization strategy would have to be established. In this case, Catalonia would recover the power to close bilateral and multilateral trade agreements with countries interested in maintaining commercial, economic and financial relations. The international framework which would have to be applied in order to enable this type of agreement to be closed is the structure regulated by the WTO (World Trade Organisation), which allows its members to reach greater commercial liberalization by establishing free trade agreements or customs unions.

3.6 Integration with the international community

The integration of the new Catalan State within the international community requires three elements. Firstly, it is necessary to achieve international community's recognition of the new State, particularly in the case of a significant number of other existing States. Secondly, the principles, values and regulations of international law would have to be incorporated within the State's own legal system. It would also be necessary to ratify the most important international treaties. Lastly, incorporation into international intergovernmental organisations (IO) would be required.

3.6.1 Recognition of the new State

The recognition of one State by another is a discretionary and political unilateral act in which State X recognises State Y. International law does not oblige States to recognise other States. However, despite being a free act, it generates legal effects. Recognition can be given in various ways, either explicitly, with a legal and formal act of recognition, or tacitly, by establishing diplomatic relations or voting for the accession of a certain State into an intergovernmental organisation. In all cases, recognition implies that the State giving recognition accepts the other as an equal, a State, which meets the requirements of statehood.

The practical implementation of the basic notion of statehood is contained in criteria or principles of the Montevideo Convention (1933), that establish the following requirements:

- A permanent population
- A defined territory
- Government, with clear control over this population and territory

- The capacity to enter into relations with the other States

Reliably demonstrating compliance with these four conditions is the first phase of the recognition process. This is accompanied by negotiations, acknowledgements, an acceptance clause with respect to international law and the first applications for membership of international organisations.

In the specific case of Catalonia, before embarking on a formal process of requesting recognition, the new State must do the following:

- Be able to demonstrate that it exists or, to put it another way, that it meets the international criteria and standards. This involves clearly demonstrating that the State has a population, the majority of which accepts the new situation. It must also be demonstrated that there is a defined territory in which a legitimate authority exercises its competences effectively over the population and territory. However, in the event that the process is not fully agreed, some temporary problems with overlapping authority and territorial control may occur.
- Search for potential support for the recognition process before the declaration of independence, with possible supporters and advocates. In this case, a minimal degree of bilateral and multilateral recognition is assured a priori, which will also serve as a practical demonstration of compliance with the fourth Montevideo criterion (the capacity to enter into relations with the other Member States of the international community).
- Establish a clear, progressive strategy with well planned, realistic and workable priorities, to achieve bilateral and multilateral

recognition gradually, with a combination of conventional diplomatic actions with a range of proposals that involve sharing benefits now and in the future. It is particularly important to develop a credible systemization of the added values and comparative advantages that the new State can contribute to the international community.

- Be fully aware that the recognition process is always gradual, for political and technical reasons, and its completion requires time. It is also important that this is communicated to the population.
- Avoid premature requests, particularly in the case of multilateral recognition, and take the potential effects of group-oriented voting on a case-by-case basis.

3.6.2 Incorporation of international law and treaties within the State's domestic law

The first measure that a potential independent Catalan State would have to adopt would be establishing a formal clause of acceptance of international law in the Interim Constitution Law. The clause would have to declare that the general principles and regulations of international law, particularly with respect to fundamental rights, are considered to be an integral part of Catalan Law.

This acceptance of international law could not simply be a declaration, however, but rather it would have to include the will to respect it.

It is particularly important to note that the ratification of international treaties is a fundamental instrument for ensuring the integration of the new State into the international community. There will be cases in which the ratification of treaties will take place almost automatically, because the new Catalan State will be considered the successor to the Spanish State. However, in view of the fact that no hard and fast regulations are established, the new State will have to conduct a thorough case-by-case analysis of the treaties that it intends to ratify,

before deciding whether it is appropriate to request succession or whether, in contrast, it would be better to open a ratification process.

3.6.3 Membership of international intergovernmental organisations

Despite being a relatively recent phenomenon on the international relations scene, international intergovernmental organisations (IIO) have developed greatly over the last two centuries. Nowadays, there are thousands of these organisations in all spheres of international life. They have become so important that 250 conventional IIOs play a key role as regulatory bodies with respect to the conduct and relations of States. They do far more than simply execute agreements established by their Member States. They make decisions that affect each and every corner of the planet and, as a result, the life of its inhabitants. This is because they deal with issues linked to internal and domestic sovereignty, and competences that until very recently were considered by many States to be the reserve of national governments.

In the case of Catalonia, it seems clear that membership of IIOs is an indispensable step on the way to recognition and for effective integration in the international community.

In conceptual terms, there are three ways to become a member of IIOs: through a formal membership process, with a simple unilateral act or through succession, based on an express provision in the organisation's regulatory treaty.

In practice, however, the basic and most commonly used approach is the formal process, as the number of cases of unilateral declaration has decreased dramatically and there has only been one significant case of succession by express provision (Permanent Court of Arbitration). Therefore, the standard method is the formal membership procedure which, in turn, is a highly diverse field.

When deciding which IIOs the new State should be incorporated into, two key elements should be taken into account: the practical and symbolic handover of their functions and the degree of difficulty of the procedures required to formalize membership.

From this perspective, despite the diverse nature of the processes, a distinction can be made between two large categories of formal membership processes to join an IIO:

- Organisations with restrictive and complex admissions processes.
- Organisations with relatively simple and open admissions processes.

In the former case, the restrictions are the result of the decision-making systems in which unanimity is required, enabling the power of veto, or, to a lesser extent, qualified majority systems that enable blocking minorities to be established. In such cases, a thorough analysis is recommended by requesting admission. The latter case involves organisations that have decision-making processes with open procedures, although, the procedure can be administratively long in some cases.

It should also be noted that, as well as the formal procedure, some IIOs have particular customs and process, such as the power to adapt the standard procedures to specific cases. For instance, this is the case of the institutions derived from the Bretton Woods Agreement (International Monetary Fund, World Bank Group).

In view of the difficulty in establishing general rules, it has been decided to classify the IIOs into broad, relatively discretionary categories and conduct a partial analysis by groups and cases.

a) Council of Europe

As an institution that even pre-dates the European Communities, the Council of Europe is considered to be a primary institution of the greatest importance, due to its symbolism, its competence and functions, and its membership procedure. While it is advisable to aim for

the status of fully-fledged State from the very first phase of international recognition, it is also a good idea to consider applying for one of the three cases of States with intermediate status, as a special guest.

It should be highlighted that there is no significant technical difficulty, or in the sphere of human rights standards. However, despite the lack of the possibility of veto, the process be shorter or longer depending on the political will of the members. For instance, the case of Montenegro was completed in under a year. This is why it may be useful to hold the status of special guest during the negotiation process.

In addition, it is worth noting that a recent report by the British Government considers that, in terms of the European Convention on Human Rights, succession could be almost automatic. In specific, with respect to this point, Crawford and Boyle state that, based on the precedents of Montenegro and Czechoslovakia and rulings by the European Court of Human Rights that have already been enacted, the application of the Convention can be considered as uninterrupted. Naturally, the same could be said for the case of Catalonia.

b) United Nations and its System

Membership of the UN and, as a result, regular presence in its main bodies has come to symbolize the full culmination of integration in the international community, even though the UN does not formally recognise States. Being a member of the UN does not only involve forming part of its main bodies, but also the possibility of accessing many of its specialized bodies by means of a unilateral act, and, finally, many of its particular mechanisms (funds, programmes, specialized or regional committees, research and training institutes, and subsidiary agencies, among others). However, in some cases, it is not necessary to be a member of the UN to become a member of one of its specialized agencies.

To obtain membership of the UN, it is necessary to follow a precise and well-established procedure:

- The candidate country sends formal notification to the General Secretary of the UN accompanied by a formal instrument of acceptance of the obligations established in the UN Charter.
- The General Secretary informs the Security Council.
- If the Council does not raise any objections, the chairman processes the issue to the Admissions Committee for new members, which analyses the application and presents its conclusions to the Council.
- The Council has to decide whether or not it recommends the admission of the candidate or whether the application should be adjourned. As this is a substantive issue, admission requires at least nine votes in favour and no vote against from any of the five permanent members of the Council.
- If the Council recommends admission, the case is then passed to the General Assembly for consideration. If at least two thirds of the members vote in favour, the General Secretary notifies the applicant country of the decision and its entry takes immediate effect.
- In the event that the Council does not recommend entry or adjourns the decision, the General Assembly can analyse the case thoroughly and decide whether to resubmit the application to the Security Council, with full minutes of the discussion, to re-examine the case and formulate a recommendation or report.

There are five conditions that must be met as a necessary requirement:

- Being a State.
- Being peace-loving.
- Accepting the obligations of the Charter.
- Being in a position to fulfil the aforementioned conditions.
- Having the explicit and reliable will to do so.

Despite perhaps being evident, the second, third and fourth conditions included on the

membership application must be made explicit by means of solemn and legally-binding declarations.

In the case of Catalonia, the main challenge is not a question of meeting the five prerequisites mentioned, but rather to achieve a favourable vote, with at least nine votes in favour and no veto from the Security Council, in the first instance, followed by at least two thirds in favour from the General Assembly.

As a final recommendation, it should be emphasized that it is not advisable to begin the application for membership of the UN prematurely or rapidly, despite its symbolic status. It should at least be ensured that there is a significant number of recognitions, sufficient knowledge of the reasons and role of the new State in the international community and a scenario of bilateral relations with Spain that are reasonably well established and based on cooperation.

With respect to the specialized agencies of the United Nations System, it is important to understand that they are a product of the long history of the organisation, created in 1945, and, in particular, the plurality of functions that the organisation can accomplish in terms of improving international governance and global cooperation.

International Monetary Fund (IMF). This institution is dedicated to promoting monetary cooperation at a global scale, ensuring financial stability, facilitating international trade and fostering employment and economic growth and the elimination of poverty around the world.

Its importance and symbolism is extremely great. In terms of belonging to this institution, two aspects should be highlighted: The first is that it is a relatively open organisation. This explains the fact that Kosovo is currently a member, in contrast to the majority of organisations of the UN System. Secondly being a member of the IMF is a prerequisite for membership of the World Bank.

The formal membership application process can be summarized as follows:

- The candidate send a formal membership application, which is received by the Executive Board (EB).
- The EB examines the application thoroughly.
- The EB presents a report to the Board of Governors with the recommendations it proposes (a draft version of the Membership Resolution). The report contains:
 - the membership fee that must be paid
 - the method of payment
 - possible terms and conditions related to entry as a member.
- The Board of Governors approves the aforementioned resolution, as applicable, marking the start of the period within which the membership must be formalized, with domestic and international legal procedures that enable the agreements to be signed and the corresponding obligations to be met.

The main obligation of the new Member is payment of the membership fee decided by the Board which, in the case of a country such as Catalonia, may be high. Two precedents worth noting are the case of Montenegro (agreed secession) and Kosovo (unilateral secession) with respect to Serbia. In both cases, the IMF consider Serbia to be the continuing State, for all legal intents and purposes, so its retained its Member status, fees and assets and liabilities. Montenegro and Kosovo therefore entered as new members. It seems likely that the case of Catalonia would progress in a similar way.

The characteristics of the IMF make it probably the primary access route to the UN System for a new State that is striving to achieve its integration in the international community.

World Bank Group - A distinction must be made between the World Bank (WB) and the World Bank Group (WBG). The former only has two members: the International Bank for Reconstruction and Development (IBRD) and

the International Development Association (IDA). Meanwhile, the latter consists of five organisations.

The entry system to the Group is conditional on two prerequisites. Firstly, applicants must be a member of the IMF (Constitutional agreement of the WB). Secondly, entry into the IBRD is required, which affects the membership of the other four institutions of the Group.

The procedure can be summarized as follows:

- The IMF Member State that is a candidate for joining the WBG submits an application, which is prepared jointly with the Bank, with all of the information considered relevant.
- The Board of Executive Directors of the IBRD (formed by twenty five people selected based on representation criteria) announces the application to the Board of Governors, which includes representative of all of the Member States. When the submission is positive, the Board of Executive Directors attaches all of the documentation it considers necessary to its report, including a proposal of the number of capital shares to which the new member would have to subscribe (a quantity that will have been decided based on prior consultations), as well as any conditions that it considers appropriate.
- The Board of Governors makes the decision by majority vote (the votes are determined by each country's capital subscriptions). Therefore, the possibility of veto or small blocking minorities is low, unless it comes precisely from the countries with greater weight in the voting due to their number of shares, such as the USA.
- Once a country is a Member of the IBRD, admission to the other four institutions simply requires an administrative procedure, which normally involves signing the Articles of Agreement, submitting a formal instrument of admission to the Corporate Secretary of the WBG and receiving approval.

FAO. This is the UN's Food and Agriculture Organisation. Admission to this organisation is regulated by Article II.2 of its Constitutional Treaty. Applicants must submit their application accompanied by a formal instrument of acceptance of the obligations established in the Constitutional Treaty and the regulations in place in the organisation at the time of submission. The decision is made by the organisation's General Conference and requires a two-thirds majority of the votes cast, on the condition that the majority of the Member States are present.

Admission can be requested in the first phase, within the international recognition process.

ILO. This is the International Labour Organisation. The admission procedure is regulated by Articles 1.3 and 1.4 of the organisation's Constitutional Treaties or Constitution. Any UN Member State can apply for membership of the organisation by submitting their application to the Director General of the ILO, accompanied by a declaration of the will to accept the Constitutional Treaties and the obligations established therein. However, Paragraph 1.4 establishes another possible mechanism: "The General Conference of the International Labour Organisation may also admit Members to the Organisation by a vote concurred in by two-thirds of the delegates attending the session, including two-thirds of the Government delegates present and voting".

In both cases, the application is presented at the annual meeting of the General Conference and requires a two-thirds majority of the votes cast, on the condition that at least two-thirds of the government delegates are present. The admission takes effect once the Director General receives the formal instruments of acceptance.

It is advisable to request admission in the first phase, within the international recognition process.

WHO. This is the World Health Organisation. Admission is regulated by Articles 1, 6 and 79

of the organisation's Constitutional Treaties. Any UN Member State can apply for membership of the organisation by submitting their application to the UN Secretary General, accompanied by a declaration of the will to accept the Constitutional Treaties and the obligations established therein. Admission can also be requested directly and may be granted if a simple majority is obtained at the annual conference of the World Health Assembly.

It is advisable to request admission in the first phase, within the international recognition process.

ITU. The International Telecommunication Union is a mixed-membership agency, formed by States and academic and private organisations. The admission procedure is regulated by Articles 2 and 53 of the organisation's Constitutional Treaties. Any UN Member State can apply for membership of the organisation by submitting their a single standardized formal instrument of acceptance of the Constitution and ITU Convention before the Secretary General. The Secretary General informs the other States and sends a certified copy. However, there is a second method, which involved submitting the admission request directly. The decision is taken at the Plenipotentiary Conference, which is held every four years, and requires a two-thirds majority. When the application is submitted between two sessions, the Secretary General consults with all of the Member States, which must respond within a period of four months. If no response is received in this time, they are considered to have abstained. Once the decision has been taken, the formal admission instrument must be deposited, taking immediate effect.

Despite the qualified majority, it is advisable to embark on the admission process as a part of the international recognition process.

UNESCO. This is the UN's organisation for education, science and culture. The admission process is regulated by Article II of the constitutional treaty of the organisation and

by Regulations 50 and 51 of the Executive Council. Any UN Member State can apply for membership by notifying the Foreign and Commonwealth Office, as the depositary of the treaty. This notification must include a formal declaration of acceptance of the constitutional treaties.

A direct application is also possible: "Subject to the conditions of the Agreement between this Organisation and the United Nations Organisation, approved pursuant to Article X of this Constitution, States not members of the United Nations Organisation may be admitted to membership of the Organisation, upon recommendation of the Executive Board, by a two-thirds majority vote of the General Conference" (Article II.2)

In both cases, the approval procedure is two-fold: firstly, a simple majority of the Executive Council is required; secondly, a two-thirds majority of the General Conference is needed.

Despite the qualified majority, it is advisable to embark on the admission process in the first phase, within the international recognition process.

WTO. This is the UN institution dedicated to promoting responsible, sustainable tourism that is accessible to all. In practice, it is the leading international organisation in the field of tourism.

In accordance with Article 3.5 of the Statutes, the admission mechanism require the candidacy to be presented and approved by the General Assembly by a two-thirds majority of the effective Members present and voting (on the condition that this majority includes the majority of the effective members of the organisation).

In view of the importance of tourism in Catalonia, it is advisable to request admission to this organisation in the first phase of the international recognition process.

WIPO. The World Intellectual Property Organisation (WIPO) is a long-established agency

that became the specialized agency of the UN in 1974.

In accordance with Articles 5 and 14 of the organisation's Convention, participation and admission is open, through a simple formal ratification process or by means of a admission instrument deposited before the organisation's Director General, on the condition that the applicant meets one of the following three criteria:

- Being a Member State of the Paris Union or Berne Union.
- Being a Member of the UN, one of its specialized agencies, the International Atomic Energy Agency or part of the Statute of the International Court of Justice.
- Being a State that has been invited to join the WIPO by its General Assembly.

In view of the fact that, in order to become a Member of the Paris and Berne Unions, applicants only have to make formal notification of admission, it seems clear that becoming a member of the WIPO simply depends on the will to do so and formally requesting to do so. Therefore, it forms part of the list of organisations to which Catalonia should apply for admission in the first phase of international recognition.

c) NATO and other international security agencies (OSCE, EU security structures, transatlantic relations and relations with the United States, etc.)

Turning to the issue of international security, it should be noted that Catalonia, as a part of Spain, has been part of the gradual process of incorporation of the central Administration into the international community that has taken place since the Spanish transition to democracy, with significant implications in terms of security. From the time of the Franco dictatorship, Spain inherited relatively incomplete diplomatic relations (such as in the case of Mexico and Israel), an asymmetrical relationship in terms of security and defence with the United States of America (USA) and the lack of incorporation in NATO.

During the Spanish transition, Spain completed its admission into the Council of Europe (1977), and later into NATO (1982) and the EU (1986). From the 1990s onward, Spain's full incorporation into the Atlantic and European security structures was validated, as well as its admission into all of the internationally significant agencies and networks. Spain also subscribed to and ratified all of the important treaties in terms of domestic and international security.

Therefore, in the event of Catalonia becoming an independent State, it will have to resolve many issues related to the presence of security agencies, treaties on the issue and, above all, coordination in terms of international security, all within the framework of full integration in the international community. To date, all of these issues have been the responsibility of the central Administration.

The decision that must be taken primarily affect four areas of foreign security: transatlantic relations and relations with the USA; membership of the OSCE; membership of NATO; and membership of the EU security structures and agencies.

Transatlantic relations. Within the restructuring process in recent years, transatlantic dialogue has been conducted bilaterally and multilaterally, in this case, through NATO and other similar organisations, some of which are private. In addition, Spain's bilateral relation with the USA has been a key element of Spanish security policy since 1953.

With respect to the bilateral treaty in terms of defence, it should be noted that Catalonia currently has no operative facilities included in the treaty, in contrast to the situation years ago with the Loran-C station in L'Estartit. As such, there are no significant problems to overcome. However, given the importance of relations with the United States, even in terms of the recognition process, Catalonia's desire to uphold privileged relations should be made clear from the very beginning.

OSCE. With respect to the Organisation for Security and Cooperation in Europe (OSCE), the successor of the Conference for Security and Cooperation in Europe created in 1973 and in force since the formalization of the Helsinki Accords (1975), this organisation is now made up of fifty seven members, as a result of the transformation of the European States in the post-Cold War period. The Member States include all of the European States (including all of the EU Members), the Russian Federation and the Asian republics that were formerly members of the USSR, as well as Canada and the USA.

The organisation undertakes a very active line of work in preventive diplomacy, conflict management, human rights protection and the protection of minors. In addition, through various documents and declarations, the organisation symbolized the transformation of the pan-European region into an area of peace and cooperation, after overcoming the hostilities of the Cold War.

However, the OSCE still implements the mechanism of unanimous decision-making, which enables any of the Member States to veto new admissions.

The immediate actions that must be taken are demonstrating Catalonia's interest in becoming a member and subscribing to and applying the principles and accords of all of the documents and agreements in the OSCE's history.

NATO. NATO is the result of the progressive organisational formalization of the Washington Treaty (1949). Technically, the organisation is based on a collective defence treaty that commits all of its members, although without the existence of an automatic clause (Article 5 of the Treaty). It is a regional security organisation, in accordance with the provisions of Chapter VIII of the United Nations Charter.

Without doubt, the issue of NATO membership is important and, as such, before considering

certain actions, it is worth analysing how admission is achieved:

In terms of the admission mechanisms, Article 10 of the Treaty clearly states that, with the exception of Canada and the USA (founding members), new members must be European and, in addition, must have been unanimously accepted by all of the States. No stipulations are included for succession mechanisms. Admission would therefore need to be negotiated.

However, the possibility of association is stipulated, through the Partnership for Peace, to which almost all European countries belong, to varying degrees.

The immediate actions that must be taken are requesting and negotiating participation in the Partnership for Peace and taking a decision of the potential admission in a subsequent phase, once the important options in terms of defence and security are decided within the framework of the constitutional process.

EU security structures. Lastly, in terms of the European Union's security structures, it should be noted that EU membership implicitly involves participation in certain highly important instruments in the field of international security, most of which are intergovernmental, such as the Common Security and Defence Policy (CSDP), part of the Common Foreign and Security Policy. The CSDP has acquired great significance since the Lisbon Treaty came into force, as it reinforces the policy's capacities and its real policy instruments.

In specific, it enables the establishment of structured and permanent cooperation between Member States that are more disposed and better equipped in terms of arms and defensive capacities. The common defence clause contained in Article 42 of the Union Treaty is particularly significant. It states that, in the event that a Member State is the object of armed aggression within its territory, the rest of the member States must provide support and assistance with all of the means in

its power. This should also be taken into consideration when designing Catalonia's international security, in view of its firm vocation to become an EU Member.

The immediate actions that need to be taken include using the policy as a starting point, as generally stated above, for the design of Catalonia's international security, and in terms of the provisions for treaties, strategies and the various EU instruments and agencies, as well as notifying the EU of this decision.

d) Other international institutions

International Criminal Court. Created in 1998 based on the Rome Statute and in force since 2002, this is a permanent international criminal justice court ruling on cases of war crimes, genocide and crimes against humanity (and, in the future, crimes of aggression as well). Although there are only 122 Member States, with significant absences, the Court has become a symbol of the fight against impunity and injustice.

The admission process is simple. It is open to any State that submits the formal admission instrument to the Secretary General of the United Nations, the depository organisation of the Rome Statute. Once the Statute has been signed, the applicant holds the status of an observer State of the Assembly of States Parties and, once notification of ratification is received, it becomes a full-fledged Member.

It appears to be clear that Catalonia would have to request admission to this institution without delay, in the first phase of the international recognition process.

Permanent Court of Arbitration. This is an IIO with a long history. It was created in 1899 as a result of the Hague Peace Conference. It specializes in the provision of arbitration services and dispute resolution between States, State institutions, IIOs and, in some cases, private organisations. Despite the obvious links in terms of principles and functions, the Court does not form part of the UN System.

Regulated by two conventions (dated 1899 and 1907), it is formed by 115 countries and has undergone a significant resurgence in recent years, probably due to its links to international commercial law and the law of the sea.

There is an obvious case for admission for a new State such as Catalonia, which has a long history of promoting peace. However, the requirement of being a Member of the UN means that this admission process will have to be wait until the second or third phase.

World Trade Organisation. The WHO was created in 1995 and is the successor of the General Agreement on Tariffs and Trade (GATT) which supervises the trade agreements that regulate and define the commercial relations between Member States. Its objective in the medium to long term is to reduce or completely eliminate international barriers to trade. It does not form part of the UN System and, as such, neither is it a member of the international financial institutions, although it does enable forms of collaboration and cooperation. In recent years, it has experienced a significant crisis due to being blocked at the Doha round. This has led to the emergence of many multilateral and, to a greater extent, bilateral trade agreements outside of the WTO framework. However, the Bali Conference (November 2013) enabled the adoption of certain agreements and the improvement of a number of the organisation's operating regulations.

The Organisation is currently formed by 159 fully-fledged members and 25 observers, all of which are in the admission process, with the exception of the Vatican. The procedure requires a two-thirds majority of the Ministerial Conference. In principle, any customs territory or State with full autonomy with respect to trade policies can join the WTO. In other words, they can sign up to the Founding Agreement and the various multilateral trade agreements. There is also a degree of technical complexity. Acceptance of the agreements established in Annex 4 must be declared separately and is

governed by the particular regulations of each agreement. In practice, this means reliably verifying that the candidate's legal framework on trade is able to respect the principles and agreements of the WTO.

In any case, a country that has been an EU Member State as part of another State and is attempting to join the Organisation rapidly should not come across any significant obstacles.

The formal admission process can be summarized as follows:

- The candidate drafts a report describing all aspects of its trade policies related to the WTO agreements. This report or memorandum is examined by a WTO working committee, open to all of its Members.
- From the moment that the main substantive issues of principles and policies have been examined, bilateral conversations begin between the candidates and each of the Member States. The process ends multilaterally in view of the fact that, despite the bilateral negotiation, the principle of non-discrimination requires the candidate's commitments to be applied equally with respect to all countries.
- Once the task of the working committee is completed (analysis of the candidate's trade structure and bilateral negotiations), a report is issued, along with a draft admission protocol and a scheduled list of commitments that the new Member would have to assume if accepted.
- These three documents are presented to the General Council or the Ministerial Conference, which must approve them by a two-thirds majority, without the possibility of veto. This involves a significant majority, but any principal political difficulties that may arise should have already come to light in the bilateral phase. In the event of the application being approved, after signing the protocol and the possible ratification if required under the domestic law, the applicant acquires Member status.

There are two final considerations in view of the importance that belonging to the WTO would have for Catalonia as an independent State.

Firstly, there would need to be a thorough analysis of the pros and cons of holding observer status, which, as mentioned above is a prior condition in almost all of the cases of full admission. This must be compatible with the negotiations required, which would have to begin within a maximum time period of five years from the start of the applicant's observer status.

Secondly, it should be remembered that EU Member States have dual status in the WTO as individual States and as part of the EU. This fact often involves stating opinions and voting as a block, as the EU has exclusive competence in terms of trade policy.

This factor must be taken into account as, in practice, it informally ties admission to the WTO with Catalonia's integration channels into the EU. This means that Catalonia's admission to the WTO would be immediate when Catalonia becomes an EU Member, in view significant scope of the competences attributed to the EU in terms of trade policy.

Within the framework of Catalonia's relations with the WTO, based on the commitments negotiated. It is also important to bear in mind the effects of an eventual free trade agreement or customs agreement that, in an interim phase, could be closed between Catalonia and the EU. This agreement could be integrated within the WTO as a preferential EU trade agreement or a customs union, constituting an exception to the clause of the most favoured nation, in accordance with Article XXIV of GATT and Article V of GATS.

In summary, it is necessary to prepare and embark on an admission process from the first phase and decide whether or not to apply for observer member status. In any case, the process is always long for technical reasons, as

highlighted by the public list of negotiations in progress.

Organisation for Economic Cooperation and Development. Founded in 1961, the OECD originated from the European pact mechanisms advocated by the USA within the framework of the Marshall Plan of post-war aid for regional reconstruction. It is currently formed by 34 countries. Its primary purpose is to promote economic progress and world trade, as well as democracy and the market economy. It has many subsidiary bodies in the form of committees, working groups and expert groups, etc. Candidate countries can participate in some of these subsidiary bodies.

Although the organisation is formally a simple forum or platform, the fact that decisions are taken unanimously gives it greater significance, particular with respect to the OECD Council, its highest decision-making body.

The admission process is potentially slow and long as it is based on a series of examinations to evaluate the candidate's suitability and real capacity to meet the organisation's standards. There are two channels for negotiating admission:

- The negotiations in progress in accordance with the 2007 decision (Slovenia, Estonia, the Russian Federation, Israel and Chile, which have deposited their admission instrument).
- The enhanced engagement mechanism designed for emerging economies and countries.

The standard procedure can be summarized as follows:

- Drafting an admission route map.
- Revision of the results, without a preset timescale, with the results being communicated to the Council.
- The Council's unanimous decision, with the corresponding power of veto, which enables the candidate to submit the admission instrument to the Treaty depository in France.

The complexity and, above all, the need for unanimity make it advisable to wait until a later stage of the integration process in the international community to embark on the admission process.

International Organisation for Migration. The IOM was founded in 1951 and currently has 155 Member States and 11 observers. Its function is to advise governments and migrants on all aspects of migration. It is not part of the UN System. It has a flexible structure, with offices and projects in over a hundred countries. The admission process to the organisation is simple.

Its Constitutional Treaty establishes the following conditions and procedures:

- Demonstration of the interest and clear commitment of the candidate with respect to the principle of free movement of people.
- Demonstration of the will and ability to make a financial contribution to the organisation, which may not be less than the administrative expenses. This figure will be agreed between the candidate and the IOM Council.
- Acceptance of the candidate by a two-thirds majority of the Council.

- Formal acceptance of the organisation's Constitutional Treaty by the new Member.

Therefore, for its own interests and the interests of the system, this appears to be an organisation to which Catalonia should attempt to join at the start of the recognition process.

Interpol. Established in 1923, the International Criminal Police organisation currently has 190 members and it is primarily dedicated to protecting public safety and fighting terrorism, organized crime, trafficking of humans, arms and drugs, child pornography, money laundering, white-collar crime and corruption. It has two main bodies, the General Assembly and the Executive Committee, as well as the General Secretariat.

Admission is granted on the condition of a favourable vote with a two thirds majority of the General Assembly.

In view of the current circumstances in terms of the fight against certain forms of international terrorism, it seems evident that it would be in nobody's interest for Catalonia to remain outside of this organisation. Therefore, admission should be requested in the first phase of integration in the international community.

Further information:

www.catalangovernment.eu
www.gencat.cat/presidencia/catn

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