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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS ON
THE DRAFT REVISION OF THE CONSTITUTION
OF MEXICO

by

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1. The goal of the Draft Revision of the Mexican Constitution presented by Senator Cesar Camacho Quiroz is described in section II of the Motives; it is clear and ambitious:

“In order to make the country stronger, it is required to invigorate the states and, with these, their municipalities ...”

“Fortalecer, al país, requiere vigorizar a los estados y, con éstos, a sus municipios ...”

According to the draft such decentralisation should be achieved by redefining and redistributing legislative, executive and judicial powers between the Federation, the States and the municipalities.

2. For this task, the point of departure appears to be Article 124 of the Political Constitution of Mexico, according to which

“The powers that are not expressly conceded by this Constitutions to federal officials are understood to be reserved to the States.”

“Las facultades que no están expresamente concedidas por esta Constitución a los funcionarios federales, se entienden reservadas a los Estados.”

The wording of this provision is proposed to be changed to

“The powers that are not expressly conceded by this Constitutions to *the Federal Government*, are understood to be reserved to *the States’ Governments*.”

“Las facultades que no están expresamente concedidas por esta Constitución *al Gobierno Federal*, se entienden reservadas a *los Gobiernos de los Estados*.”

To this provision the draft adds an extensive catalogue of concurrent competencies, *facultades concurrentes*, among which there are education, healthcare, communications, natural resources, and civil protection.

3. What precisely does the expression *concurrent competencies (facultades concurrentes)* mean in this context? What is the legal doctrine behind this expression, what is at present the political and administrative reality and what could be the development in the future? There appears to be no clear guidance in the draft, which answers there may be to these questions.

4. Another question, which has to be addressed and answered, is, what could be economically feasible. Is it necessary to redistribute – between the Federation, the States, and the municipalities – not only legislative, executive and judicial powers, but also economic resources, and, if that is the case, are there any calculations available, which may clarify the details?

5. It is obvious that legislative and administrative competences and duties on the one hand and economic resources and financial means on the other have to be balanced. But this balance is never easy to find for any government, and it is a fact of life that public entities worldwide almost never have the necessary means to achieve both the goals which they may choose and the goals which are imposed on them by others. Even more difficult is to strike a balance, if two or more levels of government – the Federation, the States and the municipalities, each with its own democratic legitimacy gained by general election – are active in the same sector (and there have to cooperate or are competing with each other).

6. The problem is addressed in section IV of the Motives. According to proposed changes in Article 73 of the Constitution the Congress will have the power to decide on the levying of certain contributions, and to this amendment it is proposed to add:

“Las Entidades Federativas participarán en el rendimiento de estas contribuciones especiales, así como de todas las contribuciones federales, en la proporción que la ley secundaria federal determine, pero siempre tomando en consideración los principios de equidad y justicia distributiva y los criterios de población, marginación social, desarrollo económico y esfuerzo recaudatorio. Las legislaturas locales fijarán el porcentaje correspondiente a los Municipios, en sus ingresos por concepto de impuestos sobre energía eléctrica.”

This final clause provides for an arrangement to share the revenue between Federation, States and municipalities; the details have to be determined by secondary – i.e. ordinary, non-constitutional – legislation, and the whole scheme has to comply with certain general standards which have to be observed nationwide. This appears to be a very reasonable solution.

7. In other areas of taxation, however, the older concept seems to prevail – that taxation rights should be divided by splitting up the general tax base into sources (income, wealth, inheritances, consumption, import, export, etc.) in order to allocate each of these sources to a beneficiary (the Federation, the States, the municipalities) exclusively or non-exclusively. If this interpretation of the Draft is correct, it should be contemplated to try to avoid the well-known drawbacks of source splitting schemes by abandoning the old concept in as many taxation areas as possible. The replacement could be a unified taxation system (with unified legislation, which is nationwide in force, and implemented by either the States or the Federation or both cooperating) together with a revenue sharing scheme which permits adjustments with regard not only to the criteria mentioned in the amendment to Article 73, but also to economic conditions in general. Without sufficient funding and a well functioning tax administration the proposed decentralisation may not succeed.