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INTERGOVERNMENTAL RELATIONS IN SPAIN AND THE CONSTITUTIONAL COURT RULING ON THE STATUTE OF AUTONOMY OF CATALONIA: WHAT’S NEXT?*

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1. Introduction

The Spanish Constitution of 1978 (SC) represents the advent of democracy in Spain after a long dictatorship and also the construction of a politically decentralised state, the so-called ‘State of Autonomies’, formed by the central government, 17 autonomous communities (ACs) and 2 autonomous cities. The territorial decentralisation process in Spain has dismantled a traditionally centralist state, has occurred in parallel with the consolidation of democracy and, moreover, has coincided with the integration of Spain in 1986 in the European Union.

Cooperation relations between the two levels of self-government have helped build a system with a considerable degree of political decentralisation. These relationships emerged in the early 1980s without any prior experience. Their instruments have been platforms for encounter, dialogue, discussion and, where appropriate, agreement between the central government and the ACs. For this reason, intergovernmental relations have a significant symbolic and pedagogic value in Spain: they display a new form of distribution of power in democracy and have prompted a dialogue between the central government and the ACs aimed at different ends, such as completing the decentralisation process, exchanging information, distributing financial transfers, participating in Europe or undertaking programmes of common interest.

In Spain, intergovernmental relations have had a new regulatory framework since 2006, both in their vertical form (central government-ACs) and in their horizontal form (between ACs). This new legal framework was not the result of a change in the Constitution, but rather was brought about through a process of reforms in several statutes of autonomy (the

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equivalent, with many exceptions, to the constitutions of the constituent units in a federal system). Among them, the new Statute of Autonomy of Catalonia, of 19 July 2006, proposed a comprehensive attention to intergovernmental relations that has notably influenced the rest of the new statutes, to the point that some contain similar or identical provisions.

However, the new Statute of Catalonia was also a very controversial legal reform. It was challenged before the Constitutional Court, which ruled on the issue in a landmark decision in Spain, the ruling on the Statute of Autonomy of Catalonia of 28 June 2010. It should not be ignored that Catalonia is one of the so-called ‘historical’ ACs (along with the Basque Country and Galicia). And one of the characteristics of the State of Autonomies is the existence of ACs with special attributes, with a feeling of nation based on their own identity and with nationalist parties established in these ACs.

In this context, the existence of a new regulatory scenario in Spain has generated expectations of change in cooperation, but have there really been changes? To answer this question, I shall first examine the new legal setting of intergovernmental relations. Second, I shall consider the impact of this new legal framework on vertical relations, which are the most developed relations in Spain. Third, I shall explore the effect of the new framework on horizontal relations, which are barely institutionalised in the State of Autonomies. Furthermore, one cannot forget that Spain’s integration in the European Union has been an important stimulus for cooperation. Therefore, fourthly, I will examine the new regulation of the European dimension of domestic intergovernmental relations. Finally, in this new legal context, I shall conclude with some prospects for the future of cooperation in the State of Autonomies¹.

2. The regulatory framework of intergovernmental relations and the role of the Constitutional Court

2.1 The Spanish Constitution of 1978

The first significant issue is the importance in Spain of trying to regulate cooperation by means of legislation. The regulatory framework of these regulations has been built gradually. Moreover, this regulation has often been controversial and, on several occasions, has been challenged in the Constitutional Court. As a result, the High Court has had to rule on the laws governing instruments of cooperation (formal mechanisms and structures) and has thus helped define the boundaries of the regulatory ground rules and the physiognomy of these relations. It is unusual for a Constitutional Court to be an actor in intergovernmental relations, but in Spain this body has played an important role in this area.

The interest in providing cooperation with a regulatory framework is perhaps surprising given that the Spanish Constitution of 1978 makes little provision with regard to intergovernmental relations. The constitutional text prefigured a system of political decentralisation and regulated the competences of the central government and the potential competences of the ACs, but cooperation was not contemplated.

¹ In this text, the terms ‘*intergovernmental relations*’ and ‘*cooperation relations*’ are used interchangeably. It should be noted that, in the State of Autonomies, the expression “*intergovernmental relations*” is used in academic circles. In laws, in institutional documents and between the *practitioners* themselves reference is made to ‘*cooperation relations*’.

The Spanish Constitution did not address vertical intergovernmental relations. It only focused on horizontal agreements that were regulated immediately after the prohibition of federation between ACs (Art. 145 SC). At that time, this instrument was perceived as a potential mechanism of union between ACs that might jeopardise the unity of the state. This defensive attitude made sense in 1978, but has been transcended after over 30 years of the State of Autonomies. Horizontal cooperation began to be developed in Spain only recently. As we shall see, it cannot be claimed that the constitutional framework is solely to blame for this situation; however, it is clear that it has not been ideally suited to the signing of agreements between ACs.

As in other countries, the Spanish Constitutional Court has recognised a principle of cooperation or institutional loyalty in vertical and horizontal relations. This is an unwritten constitutional principle inherent in the decentralised structure of the State of Autonomies. In theory, this principle is materialised in duties to refrain from harming the other party, to consider and take into account the interests of the whole, and to provide reciprocal assistance, and in the obligation to exchange information. However, unlike other systems, the Spanish Constitutional Court does not normally employ this principle to declare a law unconstitutional, so it acts more as a kind of *soft law*².

2.2 Legal regulation of cooperation: instruments and joint actions

Despite that fact that they are not specifically recognised by the Constitution, intergovernmental relations between the central government and the ACs shortly began to develop in a spontaneous manner. The first Sectorial Conference between the central government and the ACs was created on 1 July 1981, the Fiscal and Financial Policy Council. Not long afterwards, in November 1981, for the first time ever the government of Spain considered regulating vertical multilateral cooperation by law, specifically, it considered regulating Sectorial Conferences between the central government and the ACs. It should be noted that this draft bill was challenged in the Constitutional Court by Catalonia and the Basque Country, two historical ACs with ‘special traits’ and clear identity-related claims. Both ACs protested that the vertical Sectorial Conferences were mechanisms that enabled the central government to impose decisions and removal all autonomy from the new ACs.

The Constitutional Court ruled that the Sectorial Conferences between the central government and the ACs were constitutional as ‘fora of discussion for examining common problems and for discussing appropriate courses of action’³. Following this ruling, Law 12/1983, on the Autonomous Process, was passed. This law is a central government law⁴ that regulates Sectorial Conferences in order to ‘exchange points of view and jointly examine the problems of each sector and the actions proposed to address and resolve them’⁵.

Ten years later, Law 30/1992, on the Legal Regime of Public Administrations and Common Administrative Procedure (also a central government law), once again addressed

² Cruz Villalón, P. (1990). La doctrina constitucional sobre el principio de cooperación. In: Cano Bueso, J. (ed.), *Comunidades Autónomas e instrumentos de cooperación interterritorial*. Parlamento de Andalucía. Madrid. Tecnos, 1990, pp. 119-134.

³ STC 76/1982, FJ 13.

⁴ Central government law (*ley del poder central o ley estatal*) in this paper is used to refer to any law governing the country of Spain as a whole.

⁵ Ley 12/1983 (art. 4).

vertical cooperation in the State of Autonomies. This law enshrines the principle of institutional loyalty and, above all, regulates instruments of vertical cooperation: Sectorial Conferences between the central government and all the ACs, the so-called Bilateral Commissions between the central government and each Autonomous Community, agreements, consortia, as well as joint plans and programmes⁶.

The next step was to legislate multilateral vertical cooperation in specific sectors. In 2006 and 2007, two central government laws, the Law on Dependent Care and the Law on Sustainable Rural Development, provided for very intense cooperation between the central government and ACs in these two sectors: social assistance for people requiring dependent care and regional agricultural policy. These cases represent what could be seen as ‘common tasks’ –areas of co-decision and co-funding– between the central government and the ACs in sectors in which the ACs have competence. This is a situation that is not provided for by the Constitution, that was reached without constitutional reform and that is consented by all ACs that have not challenged these laws in the Constitutional Court⁷.

2.3 The new statutes of autonomy and the Constitutional Court ruling on the Statute of Catalonia

The Spanish Constitution of 1978 has only been reformed twice: in 1992 on the occasion of the ratification of the Maastricht Treaty to give the citizens of EU member countries the right not only to vote, but also to be elected in local elections (Art. 13.2 SC); and in 2011 to include the principle of budgetary stability as a consequence of the economic crisis (Art. 135 SC).

A reform of the Constitution which includes territorial reform has not been possible yet. The alternative has been to reform the statutes of autonomy, the equivalent –with many exceptions– to the constitutions of the constituent units in a federal system. Statutes of autonomy are special laws negotiated between the central government and each AC. Their territorial effectiveness is limited to the sphere of the corresponding Autonomous Community. Along with the Constitution, the statutes of autonomy constitute the so-called territorial constitution in Spain. The first statutes of autonomy were adopted during the period 1979-1983. The new statutes, also called ‘second-generation statutes’, were approved between 2006 and 2011. It should be noted that not all ACs have opted to reform their statute of autonomy. Of the 17 ACs, eight have a new statute or have partially reformed their previous one⁸.

How cooperation and cooperation instruments are handled is one of the most significant new elements of the new statutes. Through this, the new statutes have sought to

⁶ Ley 30/1992 (arts. 4-10). Alberti Rovira, E. (1993). *Relaciones entre Administraciones Pública*. In: Leguina Villa, J., Sánchez Morón, M. (dirs.). *Comentarios a la Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común*. Tecnos. Madrid, pp. 41-70.

⁷ Specifically, on dependence, Sáez Royo, E. (2010). “Las relaciones intergubernamentales en España: Las relaciones de cooperación intergubernamental en la Ley de Dependencia: un paso sustantivo”. In: Tudela Aranda, J., Knüpling, F. (eds.). *España y modelos de federalismo*. CEPC. Madrid, pp. 361-386.

⁸ Valencian Community (2006), Catalonia (2006), Balearic Islands (2007), Andalusia (2007), Aragon (2007), Castilla y León (2007), Navarra (2010), Extremadura (2011). The new Statutes are available on the web page of the Ministry of Territorial Policy: http://www.mpt.gob.es/es/areas/politica_autonomica/Estatutos_Autonomia.html.

supplement the scant treatment of this question in the Constitution –and in the first statutes of autonomy– and provide regulatory visibility to this type of cooperation. The statutory reforms are heterogeneous. However, all the new statutes devote particular attention to cooperation in its vertical, horizontal and European dimension⁹.

As we will see, in the vertical dimension, the most notable addition has been the strengthening of bilateralism with the central government and of bilateral instruments, especially through the new Bilateral Commissions. To the contrary, horizontal cooperation has not been a priority for the new statutes, nor have there been important legal developments in this area. Nevertheless, there is evidence of change in cooperative practice. The new statutes also regulate both vertical and horizontal domestic cooperation in so-called ‘European clauses’. The participation of regional institutions in the integration process has increased the need for cooperation with the central government in all decentralised systems in Europe, and Spain has not been an exception.

Amongst the new statutes of autonomy, the Statute of Catalonia of 2006 contains the most extensive regulation of intergovernmental relations. It has served as a reference for all subsequent statutes and the regulation of the Statute of Catalonia of 2006 was also very controversial. The controversy lies not only in this area, but in practically the entire Catalan text. The Statute of Catalonia has left nobody indifferent.

As mentioned, Catalonia is a historical Autonomous Community which, along with the Basque Country in particular, has constantly pursued a greater level of self-government and even a new territorial organisation. The objectives of the reform of the Statute of Catalonia included: enhanced recognition of Catalan identity, increased competences for Catalonia and a new funding system. As far as cooperation was concerned, the most controversial aspect of the Statute of Catalonia was bilateralism between the central government and Catalonia. Other statutes contain similar or even identical provisions; however, only the regulation of the Statute of Catalonia was challenged in the Constitutional Court¹⁰.

In June 2010, the High Court upheld that the way cooperation is regulated in the Statute of Catalonia was constitutional, with certain qualifications. No article in this area was declared unconstitutional. Constitutional Court ruling 31/2010, of 28 June, affects not only the regulation of intergovernmental relations in the Statute of Catalonia, but also the regulation provided for in other statutes, in particular, in those drafted in a similar or identical fashion to that of the Statute of Catalonia. The Constitutional Court once again became an actor in cooperation relations through a legal decision regarding the compliance of this regulation with the Constitution and through the political impact of this decision on cooperative practice. Let us consider the impact of this new legal regulation and this ruling on cooperation relations.

3. Vertical cooperation: multilateralism and... more bilateralism?

⁹ García Morales, M.J. (coord.) (2009). Las relaciones de colaboración en los nuevos Estatutos de autonomía. Revista Jurídica de Castilla y León, No. 19 [número monográfico].

¹⁰ The Statute of Andalusia is the most similar. The Statute of Catalonia was contested in the High Court by 50 MPs from the Popular Party parliamentary group in the Spanish Parliament, the *Defensor del Pueblo* (the Spanish Ombudsman) and the government of the Autonomous Community of La Rioja.

3.1 *The culture of cooperation with the central government: as always, the multilateralism plus bilateralism approach*

Intergovernmental relations in Spain have been and continue to be predominantly vertical. The culture of cooperation in the State of Autonomies has been developed with the central government. The historical circumstances of the Spanish decentralisation process and the constitutional architecture have aided vertical development of intergovernmental relations.

Autonomous Communities need the central government to realise their objectives: transfer of competences (from the central government to the ACs), attainment of financial resources (the central government has the *spending power* and the ACs are heavily dependent upon state revenue), and participation in the European Union (the central government is the main interlocutor for Brussels). However, the central government does not need the Autonomous Communities to pass its laws or to approve constitutional reform. Furthermore, in Spain, there is no senate serving as a chamber of regional representation where Autonomous Communities can participate in central government legislation. Moreover, ACs do not have the right to veto central government initiatives.

Vertical cooperation relations in Spain are formalised multilaterally, primarily through the Sectorial Conferences, and in bilateral structures, the so-called Bilateral Commissions for Cooperation. This multilateralism-bilateralism combination in formal structures of cooperation is a peculiarity of the State of Autonomies.

In Spain, there are ACs with differentiating elements acknowledged in the Constitution and in the statutes of autonomy. Such elements are historically well-founded characteristics which endow them with a special ‘personality’ in comparison to other regions (in particular, a language, a private law and a funding system unique to certain regions).

The legal expression of differentiating elements should not be confused with the existence of nationalist ideologies or parties in these ACs. Such parties have government duties in these Autonomous Communities and, in addition, provide parliamentary support to the central government vested in the two major parties state-wide, the conservative Popular Party (PP) and the Socialist Party (PSOE). Nationalist parties established in an Autonomous Community also participate in state institutions based on results obtained in their Autonomous Community and support the central government in power on state governance¹¹. Most nationalist parties primarily seek to defend the interests of their Autonomous Community and have given political backing to the bilateral approach in order to negotiate ‘one-on-one’ with the central government. In the State of Autonomies, there is an informal bilateralism that normally exists between parliamentarians and politicians in central government institutions and a formalised bilateralism in *ad hoc* structures, the Bilateral Commissions for Cooperation.

The driving force behind the creation of these Bilateral Commissions has been technical rather than political. Bilateral Commissions as formal structures of cooperation

¹¹ Aja, E. (2003), *El Estado autonómico. Federalismo y hechos diferenciales*. Alianza, Madrid, pp. 169-199. Viver Pi-Sunyer, C. (2010). *El reconeixement de la plurinacionalitat de l'Estat en l'ordenament jurídic espanyol*. In: Requejo, F., Gagnon, A.-G. (eds.), *Nacions a la recerca de reconeixement*. Institut d'Estudis Autonòmics, Barcelona, pp. 213-234 [In French in: Requejo, F., Gagnon, A.-G. (2011). *Nations en quête de reconnaissance*. Peter Lang, Brussels].

came into being in order to negotiate the transfer of competences from the central government to the ACs. Political decentralisation in Spain has entailed a gradual process of transfers from the central government to the ACs. This has been a bilateral process with each Autonomous Community. In addition, bilateralism has been necessary, because this process has not been simultaneous in all ACs. The journey of the Autonomous Communities towards self-government has occurred at ‘two speeds’: some, the so-called ‘fast lane’ ACs (which include the historical Autonomous Communities), assumed *ab initio* more competences than the other ‘slow lane’ ACs. This difference in speed has favoured bilateral negotiation with each Autonomous Community individually.

3.2 Multilateralism: the Conference of Presidents and the Sectorial Conferences, How do their accords bind?

Formal structures of vertical cooperation in Spain are multilateral and bilateral, but the most important are the former.

The Conference of Presidents should be the most important instrument of cooperation. It was created in 2004 to annually convene the president of the government (the prime minister of Spain) and the presidents of the Autonomous Communities. It has been held at the Senate. The constitution of this Conference was one of the items on the agenda of the Socialist Party that won the general election that year¹². All ACs have attended the meetings of this Conference. Its rules give it important functions: to discuss broad guidelines for public policies and matters of great importance for the State of Autonomies. In practice, the Conference of Presidents has reached a situation of impasse: four meetings have been held in seven years and it has not been convened since December 2009. In such a short period, the results have been limited: basically, an agreement on health funding and a map of investment in science and technology infrastructure. For the time being, its impact on the cooperative landscape has been non-existent and its future is uncertain.

In the absence of a Conference of Presidents, the most important instrument of cooperation in Spain has been the Sectorial Conferences, which are multilateral cooperation bodies characterised by their subject speciality by area. Sectorial Conferences were the first instruments of cooperation in the State of Autonomies. It should not be forgotten that in Spain these conferences are vertical. They have existed for years not only without a vertical Conference of Presidents, but also without horizontal coordination, as there is no Conference of Presidents only for ACs nor are there horizontal Sectorial Conferences.

Vertical Sectorial Conferences are not addressed in the new statutes, but in Law 30/1992. This law gives the minister from the central government the power to convene the Conference and to set the agenda. This power was ruled to be constitutional by the Spanish Constitutional Court, interpreting that it does not necessarily vest a hierarchical power in the central government¹³. The law also refers to the composition of the Sectorial Conferences made up of members from the central government and from the governments of the ACs. Typically, the members of the Sectorial Conferences are the minister from the central

¹² The creation of the Conference of Presidents became one of the items on the regional agenda of the president of the government, Mr Rodríguez Zapatero. Further details, Tajadura Tejada, J. (2010). *El principio de cooperación en el Estado autonómico*. Comares. Granada, pp. 134-172.

¹³ STC 76/1983, FJ 13.

government and the regional ministers from the ACs of the subject area in question. The main products stemming from the Sectorial Conferences are *accords (acuerdos)*, which have a political value, and *intergovernmental agreements (convenios de colaboración)*¹⁴, which are legally binding.

The new statutes recognise ‘multilateralism’, but do not mention the expression ‘Sectorial Conference’. To be precise, the Statute of Autonomy of Catalonia refers to multilateralism as a principle governing relations between Catalonia and the central government, along with the principle of bilateralism¹⁵. This Statute pays particular attention to the effects of multilateralism. It has been the only statute of autonomy to include the provision that the Autonomous Community should not be bound by agreements adopted in multilateral forums and should be able to express reservations regarding those agreements adopted without its approval¹⁶.

The Constitutional Court ruled that both aspects are constitutional. According to the High Court, participation in multilateral mechanisms is voluntary. For this reason, decisions adopted there cannot be imposed upon those who attend these forums. As a consequence of this voluntary nature, it is possible for the Autonomous Community to express its disagreement with multilaterally adopted accords. This disagreement in the form of reservations in no case represents a veto by the Autonomous Community¹⁷.

From a legal standpoint, this ruling contributes nothing new. The Constitutional Court reiterates its jurisprudence regarding the voluntary nature of cooperation and the impossibility of an Autonomous Community to waive its own powers in the framework of cooperative instruments. By contrast, the provisions in the Statute of Catalonia evidence Catalonia’s historical mistrust of vertical multilateral instruments. Once again, there is the underlying Autonomous Community perception of multilateralism as a central government strategy to impose its points of view and attempt to equalise the ACs by means of the so-called ‘coffee for all’ (or one size fits all) approach, an expression often used in the State of Autonomies to illustrate the central government’s strategy of trying to appease all ACs and use multilateralism to dilute identity-related and unique demands that call for a different solution.

In this context, the new statutes and the ruling on the Statute of Catalonia do not change the legal framework of vertical multilateral instruments. Moreover, the practical activity of the Sectorial Conferences in Spain has not changed with the new statutes.

There are currently 15 Sectorial Conferences that operate regularly with meetings at least twice a year. The activity of the Conferences varies considerably (the most active are Agriculture and Education). The decision rule in the Sectorial Conferences tends to be unanimity¹⁸. The most routine function in these fora is to set criteria that the central

¹⁴ In Spain, vertical agreements are usually referred to as *agreements (convenios)* if they are legally binding and simply as *accords (acuerdos)* if they are political commitments that are not legally binding. To underline this difference, in this text I have used *accord* as a translation for *acuerdo* (agreements which are not legally binding) and *agreement* as a translation for *convenio* (agreements which are legally binding).

¹⁵ Multilateralism appears in the Statute of Catalonia as a principle (Art. 3), a means of cooperation with the central government (Art. 175), and a means of participation in European affairs (Art. 186) and in funding issues (Art. 210).

¹⁶ Art. 176 of the Statute of Catalonia.

¹⁷ STC 31/2010, FJ 112.

¹⁸ García Morales, M.J., Arbós Marín, X., “Intergovernmental Relations in Spain”. In: Saunders, Ch., Poirier, J. (eds.), *Intergovernmental Relations in Federal Systems. A Global Dialogue on Federalism*, vol. 8, McGill/Queen’s University Press, Montréal/Kingston (in press). Institutional information about existing

government uses, employing its *spending power*, to assign financial transfers to ACs which are then formalised via vertical agreements. Through this financial cooperation, the central government promotes programmes in the ACs and achieves considerably homogeneous actions in sectors like social issues and education. Regulatory cooperation between the central government and the ACs is not very institutionalised. The central government decides which draft legislation to bring to the attention of a Sectorial Conference. In European affairs, the Sectorial Conferences are the fora where the ACs are involved in forming the state's position with regard to the European Union, a very important function in 'Europeanised' sectors (in particular, agriculture and fisheries).

This practical operation of the Sectorial Conferences has led to criticism of multilateralism. The problem is not technical, cannot be solved with laws and does not lie in its instruments. The major stumbling block is political. ACs do not always share the central government's concern for multilateralism. In many cases, ACs give priority to their own demands. Moreover, ACs perceive an initiative of a minister from the central government in a Sectorial Conference (which is vertical) as a political initiative of the ruling party. The absence of ACs at meetings of the Sectorial Conferences and their scant interest in including issues on the agenda show the lack of involvement of the ACs in the actual functioning of the Sectorial Conferences. In this context, it is not always easy to define common goals between ACs and the central government in these fora¹⁹.

3.3 Bilateralism: the new Bilateral Commissions as a potentially confederal element and the new rights of participation

The so-called Bilateral Commissions between each Autonomous Community and the central government have been the most significant and controversial addition in the statutory reforms. However, bilateralism is nothing new in the State of Autonomies. The Bilateral Commissions were created to negotiate the transfer of competences from the central government to each AC and to address specific problems with an Autonomous Community. The first Bilateral Commission was set up in 1983 between the central government and Navarra. The extension of this structure, which today exists with each AC, has been a gradual process that concluded in 2000²⁰.

Law 30/1992 defines Bilateral Commissions as cooperation bodies designed to address general issues as opposed to the sectorial initiatives of the multilateral Conferences. Bilateral Commissions bring together members of the central government and of the Autonomous Community governments, but not their presidents. The government representation from the

conferences, available on the web page of the Ministry of Territorial Policy (Autonomous Policy): http://www.mpt.gob.es/es/areas/politica_autonomica/coop_multilateral_ccaa_ue/cooperacion_multilateral/Conf_Sectoriales.html.

¹⁹ Pérez Medina, J.M. (2009). Las relaciones de colaboración entre el Estado y las Comunidades Autónomas desde la perspectiva de la Administración General del Estado. *Revista Jurídica de Castilla y León*, No. 19 [número monográfico], p. 350. The existence of diverse interests hinders cooperation even in countries that are a model of cooperative federalism, Jeffery, Ch. Vom kooperativen Föderalismus zu einer Sinatra-Doktrin der Länder. In: Meiner-Walser, R.C., Hirscher, G. (Hg.). *Krise un Reform des Föderalismus*. Olzog, München, 1999, pp. 50-63.

²⁰ The Bilateral Commissions were established in this order: with Navarra (1983), with Catalonia, the Basque Country and Galicia (1987), with Murcia and La Rioja (1988), with the Balearic Islands (1989), with the Canary Islands and Aragon (1990), with Cantabria (1991), with Castilla y León and Extremadura (1992), with Asturias (1993), with Castilla-La Mancha (1996), and with the Valencian Community and the Community of Madrid (2000). The Bilateral Commissions with the Autonomous Cities of Ceuta and Melilla (1995).

central government is usually headed by the minister of Territorial Policy, and the delegation from the ACs is comprised of regional ministers. In the Bilateral Commission, each government has equal representation and either side may request that a meeting be convened. In 2000, the reform of the Organic Law on the Constitutional Court gave the Bilateral Commissions a significant impetus to try and use negotiation in these fora to resolve the considerable number of disputes between the central government and the ACs brought before the Spanish Constitutional Court²¹. This is bilateralism with all ACs. Furthermore, this ‘pacifying’ function is the most routine activity of the Bilateral Commissions.

The Bilateral Commissions of the new statutes are known as ‘new Bilateral Commissions’ or ‘statutory Bilateral Commissions’ so as to differentiate them from the first ‘non-statutory Bilateral Commissions’ which are not in the statutes of autonomy. The first change is how they are regulated in the text of the statutes.

The Statute of Catalonia of 2006 was the first to extensively regulate this instrument. The regulation of bilateralism and of bilateral instruments in the Statute responds to a technical question. Statutes of autonomy are a special kind of law: these special laws are developed through a procedure involving the institutions of the relevant Autonomous Community and the institutions of the central government. The statutes of autonomy are laws passed by the respective Autonomous Community parliament but also laws ultimately passed by the Spanish Parliament (they may occasionally be ratified through a positive referendum of the people of the AC in question). As a result, a statute of autonomy may regulate relations between an Autonomous Community and the central government (and are therefore bilateral), but they are not instruments in which all ACs participate. Furthermore, the regulation of bilateralism also indicates an attempt to encourage the bilateral relationship demanded by governments of this Autonomous Community, in view of the problems and dissatisfaction generated by the relationship in multilateral fora. The provision for a Bilateral Commission in the Statute of Catalonia was repeated in most new statutes adopted later and in ACs where identity-related demands are not as strong or non-existent²².

In the Statute of Catalonia, bilateralism is recognised as one of the principles determining the Autonomous Community’s relationship with the central government, along with multilateralism. The Bilateral Commission is a materialisation of this principle. It is regulated extensively and assigned functions in multiple policy areas²³. The breadth of this regulation contrasts with the frugality with which multilateral relations are regulated. The Bilateral Commission was challenged in the Constitutional Court on the grounds that it represented a clear movement towards a confederal state model that would introduce a radical change and even a severing in the territorial system in Spain.

²¹ According to the Organic Law on the Constitutional Court (Art. 33.2), if the parties choose to resolve a dispute through negotiation, the deadline for lodging an appeal in the Constitutional Court is extended by six months with regard to the three initially provided. In terms of efficiency, results vary between Bilateral Commissions. In general, it may be said that these instruments have helped to reduce the number of disputes in the Constitutional Court.

²² The statutes of the Valencian Community and the Balearic Islands are the only ones that do not provide for a Bilateral Commission. The Statute of Andalusia follows the Catalan regulation in almost identical terms. Ridaura Martínez, M. J. (2010). *Comisiones Bilaterales de Cooperación y nuevos Estatutos de Autonomía*. In: García Roca, J., Albertí Rovira, E. (coords.). *Treinta años de Constitución*. Tirant lo Blanch. Valencia, pp. 256-274.

²³ The Bilateral Commission may deliberate, make proposals and pass resolutions with regard to the following areas: draft laws, economic policy agendas, promotion of measures to improve cooperation, assessment of such measures, power disputes and subsequent resolution, monitoring of European policy, monitoring of overseas activity, and any issue of common interest (art. 183).

The Constitutional Court held that the principle of bilateralism and bilateral instruments may be regulated in the Statute of Autonomy. It also ruled that the Bilateral Commission between Catalonia and the central government (officially called the *Comisión Bilateral Generalitat-Estado*) is constitutional, but with certain nuances that point to prevention rather than bilateralism as a means of expressing special status for Catalonia.

First, the Constitutional Court has insisted on recalling who the *subjects* of this bilateral relationship are: Catalonia as an Autonomous Community and the central government, ‘that is, between two constitutive elements of the Spanish state’, under no circumstances between Catalonia and the Spanish state. This precision is a consequence of the polysemy of the term state (*Estado*) in Spanish. Unlike in other countries, where the words *Bund* or Federation refer to the central government, in Spain there is no specific expression, so the term state (*Estado*) is used to refer to both the central government (*Estado central*) and to the State as a whole. Second, the Bilateral Commission is *another instrument of cooperation* between the Autonomous Community and the state, which means denying its exclusiveness as a form of relationship. Third, the Bilateral Commission is a mechanism of *voluntary cooperation* which, like other cooperative instruments, can neither alter the distribution of competences nor condition nor limit the exercise of competences by either institution. The High Court thus denies the possibility of the Bilateral Commission serving as a co-decision body²⁴.

In cooperative practice, there is no evidence that the new Bilateral Commissions perform actions or have dynamics different from those of previous Bilateral Commissions or other non-statutory Bilateral Commissions. The Bilateral Commissions of Catalonia and Andalusia were the most active ones during the period 2007-2011²⁵. As in their previous phase, these new Bilateral Commissions are primarily responsible for negotiating outstanding transfers from the central government to an Autonomous Community and for addressing specific problems between both sides. The new Bilateral Commissions continue to prevent jurisdictional disputes, thus maintaining this pacifying function. Consequently, for the time being, the new Bilateral Commissions have not led to changes in the cooperative or institutional landscape²⁶.

Bilateral Commissions are the most visible manifestation of bilateralism in the Statute of Catalonia and in those following it. However, the commitment to bilateralism is also evident in the new procedures for Autonomous Community participation in decisions taken at a national level. The new statutes provide for two types of participation: first, participation in appointing members of state institutions (including the Constitutional Court); and second, participation in exercising competences of the central government. While the former has to be carried out via central government laws, the latter represents a new form of cooperation.

²⁴ STC 31/2010, FFJJ 115, 116. Along with the general Bilateral Commission, the Statute of Catalonia provides for two specific Bilateral Commissions: the Joint Economic and Fiscal Affairs Commission (Art. 210) and a Bilateral Commission on Investments in Infrastructures (third additional provision). The Constitutional Court has also upheld their constitutionality.

²⁵ The Bilateral Commission with Catalonia: eight meetings; the Bilateral Commission with Andalusia: seven meetings; the Commission with Aragon: three meetings; the Commission with Castilla y León (two meetings) (source: prepared by the author).

²⁶ García Morales, M.J. (2009), Los nuevos Estatutos de Autonomía y las relaciones de colaboración. Un nuevo escenario, ¿una nueva etapa? Revista Jurídica de Castilla y León, No. 19 [número monográfico], pp. 383-394. Institutional Information about the Bilateral Commissions: http://www.mpt.gob.es/es/areas/politica_autonomica/coop_bilateral_CCAA/comisiones_bilaterales.html

An Autonomous Community's participation in exercising central government competences shows its particular interest in influencing central government activity affecting its region. This trend had been apparent for years and was formalised with the adoption of the new statutes. This was an attempt to offset the lack of participation by ACs in the central government's decision-making processes, as the latter was under no legal obligation to consult the Autonomous Communities in these cases.

This participation is materialised bilaterally through consultation with the Autonomous Community, the issuing by the AC of mandatory (non-binding) reports or the Bilateral Commission's intervention in certain cases. In the Catalan Statute, there are numerous instances of the Autonomous Community's participation. For example, the Autonomous Community should voice its opinion if action is proposed in the area of public works, infrastructures or transport within its region. Only some of the new statutes contain examples of participation similar to those of the Statute of Catalonia²⁷.

The Constitutional Court ruled that the projected participation is a new form of cooperation. It cannot change who holds the competence or condition the decision to be adopted by the central government. For this reason, this participation cannot be manifested in decision-making bodies, but only 'in consultative and advisory bodies'²⁸. The central government is thus required to listen to the Autonomous Community, but it is not bound to follow the opinion expressed by the latter.

The new projected participation in central government competences may produce asymmetries between ACs. From a legal standpoint, such projected participation is a right available only to those ACs providing for it in their statute. However, there is nothing to prevent a political decision by the central government from unilaterally extending that participation to all Autonomous Communities. Nevertheless, this new projected participation for Autonomous Communities represents a major step forward towards cooperation in the exercise of competences²⁹. The rights of ACs to participate in central government decision-making processes have not yet been put into practice.

4. Horizontal cooperation: signs of change... greater cooperation between Autonomous Communities?

4.1 The scant development of cooperation between Autonomous Communities, until the new statutes?

Since the adoption of the Spanish Constitution of 1978 and for almost 30 years, formalised and institutionalised horizontal cooperation in the State of Autonomies has been very rare. The clearest indicator of this situation has been the number of agreements between ACs: some 20 horizontal agreements were officially recorded between 1985 and the adoption

²⁷ In particular, the Statute of Andalusia and partially the Statute of Aragon.

²⁸ STC 31/2010, FJ 111.

²⁹ Corretja, M., Víntró J., Bernadí, X. (2011). Bilateralitat i multilateralitat. La participació de la Generalitat en polítiques i organismes estatals i la Comissió Bilateral. *Revista d'Estudis Autònòmics i Federals*, No. 12, pp. 403-446; Montilla Martos, J. A. (2011). Las relaciones de colaboración en el nuevo marco estatutario: bilateralidad y participación. *Revista de Estudios Políticos*, No. 151, pp.184-195.

of the first new statutes in 2006³⁰. Beyond the actual number of agreements, this cooperation has normally been initiated between neighbouring ACs in order to resolve problems arising from their relations as neighbours, in particular, firefighting and healthcare between bordering ACs. During this time, no agreement has been signed involving most Autonomous Communities, which shows that for nearly 30 years of the State of Autonomies, ACs have been unable to find an area of interest common to all of them.

This state of cooperation between Autonomous Communities is not only a particularity of the State of Autonomies, but also a great anomaly³¹. The state of horizontal cooperation contrasts with the development and institutionalisation of vertical relations. In contrast with cooperation with the central government, there are neither horizontal conferences nor structures where ACs have been able to meet, discuss and agree upon the results of their cooperation without the central government.

As noted, the constitutional structure and political dynamics have favoured the development of vertical cooperation. The relationship with the central government provides ACs with more money, more competences, influence in Europe and, indeed, more prestige than cooperation with other ACs. Autonomous Communities have not perceived the advantages of establishing strong horizontal relations. Moreover, the construction of the State of Autonomies has not encouraged a culture of cooperation between ACs. Until 1992, there were Autonomous Communities with a different number of competences. The way self-government is felt has also differed considerably among ACs that base their political autonomy upon a prior historical tradition and other Autonomous Communities which, in the absence of such historical tradition, have had a far more administrative conception of their autonomy. ACs have primarily defended their own interests before the central government on an individual basis without seeking consensus with other ACs.

To what extent is the law to blame in this situation? As mentioned, the Spanish Constitution regulates agreements between ACs. Article 145 SC prohibits federation between ACs. Having established this prohibition, it sets forth conditions for adopting these agreements to ensure that this prohibition is not violated using this instrument. Article 145.2 SC differentiates between two types of pacts between ACs: collaboration agreements (*convenios de colaboración*), which must be communicated to the Spanish Parliament, and cooperation agreements (*acuerdos de cooperación*), which must be authorised by the latter. This article has not been amended since 1978, although it is on the 'agenda' of aspects in need of reform in the Spanish Constitution³².

The text of the current Constitution makes it impossible to know what a collaboration agreement is and what a cooperation agreement is. The Constitution does not define them, and neither has the Constitutional Court. Nevertheless, each pact must fulfil different

³⁰ The official number of agreements between ACs is calculated on the basis of agreements communicated to the Spanish Parliament, which may be viewed on the Senate web page: <http://www.senado.es>. See also, García Morales, M.J. (since 2001, annual). *Convenios de colaboración entre el Estado y las Comunidades Autónomas y entre Comunidades Autónomas*. In: Tornos Mas, J. (dir.), *Informe Comunidades Autónomas*. Instituto de Derecho Público. Barcelona.

³¹ García Morales, M.J. (2009). *La colaboración a examen. Retos y riesgos de las relaciones intergubernamentales en el Estado autonómico*. *Revista Española de Derecho Constitucional*, No. 86, pp. 116.

³² Rubio Llorente, F., Álvarez Junco, J. (eds.) (2006). *Informe del Consejo de Estado sobre la reforma constitucional. Texto del informe y debates académicos*. CEPC, Consejo de Estado. Madrid, pp. 163-165.

requirements in order to be validly approved. In practice, nearly all horizontal agreements are collaboration agreements between ACs³³.

The first statutes in the late 1970s and 1980s further complicated the already complex nature of the Spanish Constitution. The first statutes included additional requirements for signing an agreement between ACs; specifically, the parliament of the Autonomous Community needed to be involved in the formalisation of an agreement between ACs by granting its approval or authorisation, something which only applied to agreements between ACs and not to agreements between an Autonomous Community and the central government. Furthermore, most of the early statutes of autonomy have enabled the Spanish Parliament to reclassify a text that the ACs announced as a collaboration agreement (which only needs to be reported to the Spanish Parliament) as a cooperation agreement (which requires greater control by central government institutions). It is no exaggeration to say that ACs wishing to sign agreements with one other have to undergo a genuine legal ordeal. In Spain, it is easier to sign a vertical agreement or even a cross-border cooperation agreement (with regions of another country) than an agreement between ACs.

Nonetheless, the law is neither solely nor most directly responsible for this situation. Until recently, there was not more cooperation between ACs because the necessary political will was lacking. The regulatory framework for horizontal cooperation has not been optimal, but it cannot be pinpointed as the cause of the limited development of horizontal cooperation. Since the entry into force of the first new statutes, beginning in 2006, the number of agreements between ACs reported to the Senate has grown significantly. The figures on the number of agreements reported to the Senate speak for themselves: some 20 horizontal agreements were recorded during the period 1978-2005, while in the period 2006-2011, there were over 40 agreements between ACs. Are the new statutes responsible for this major change? Does the law have the power to change cooperative practice in this way?

4.2 The Constitutional Court's appeal for horizontal cooperation vs. a deficient legal design

The first point to note is that horizontal cooperation was not a priority when the new statutes were drafted. Cooperation between ACs was a secondary goal for most second-generation statutes.

The Statute of Catalonia has been one of the new statutes inclined to include appeals for cooperation between ACs. Thus, several provisions provide for cooperation between Catalonia and other ACs in matters like emergency actions, natural areas and protection of the Catalan language. These are appeals for sectorial cooperation with neighbouring ACs. Specifically, the promotion of the Catalan language, a differential factor that Catalonia shares with other ACs (in particular, the Balearic Islands), is one of the most fertile areas for bilateral horizontal cooperation in the State of Autonomies.

The Statute of Catalonia also promotes cooperation between all or most ACs. In generic terms, this text provides that Catalonia can establish cooperation relations with other ACs in order to set common policies, to effectively exercise its competences and to address issues of common interest, especially when their impact extends beyond the region. Indeed, in

³³ Only one cooperation agreement has been signed: the so-called Mediterranean Arc Agreement signed by Andalusia, Murcia, the Balearic Islands and the Valencian Community in 1994.

cases of supra-regional impact, cooperation between ACs is a way of avoiding central government intervention. Only a few of the new statutes have also included this provision³⁴.

The Constitutional Court has confirmed their constitutionality. These statutory provisions are not exactly innovative, as they reflect the jurisprudence of the Court itself, which has repeatedly stated that a supra-regional reach cannot be an excuse for the central government to ‘seize’ Autonomous Community competences ‘but that what is constitutionally applicable should be the establishment of mechanisms for cooperation between affected Autonomous Communities without modifying competences’³⁵. These declarations call for cooperation between ACs to avoid recentralisation, but they have not served to stimulate this cooperation except in very specific cases, like the creation of a consortium between three ACs in the north of Spain in order to manage a national park.

The new statutes seek to promote bilateral and multilateral cooperation between ACs. They reflect constitutional jurisprudence that is *pro* horizontal cooperation. However, there are hardly any reforms in the legal design of the agreements between ACs, which are the instruments that should materialise the desire to cooperate. Most of the new statutes have again included requirements that do not make it easier to formalise an agreement between ACs. Because of this, the process of statutory reform has been an (incomprehensibly) missed opportunity to facilitate the signing of agreements between ACs in Spain. Unlike vertical instruments, the regulatory framework for horizontal agreements in the Statute of Catalonia has not generated controversy. It is one of the few articles that have not been challenged in the Constitutional Court.

4.3 Meetings between Autonomous Communities, the Conference of Autonomous Community Governments and multilateralism between Autonomous Communities: has the time for horizontal cooperation arrived?

The new statutes make few legal changes to horizontal cooperation. Nevertheless, approval of the statutes has represented *de facto* the emergence of a climate of cooperation and the political will to activate it. As mentioned, in a period of five years (between 2006 and 2011), the number of agreements between ACs tripled the number of horizontal agreements signed during the preceding 25 years (between 1978 and 2005). This increase in agreements between ACs is mainly due to the emergence of the so-called Meetings between ACs with new statutes. It is interesting to note how the same cooperation between Autonomous Communities that was a secondary aim during the drafting of the new statutes became a political priority once they were approved.

The decentralisation process in Spain began in order to satisfy political demands, i.e., to respond to the self-governing aspirations of the historic ACs. However, the State of Autonomies is also legitimised by efficiency. There are areas where the absence of horizontal relations may cause citizens problems. The best known case has been that of hunting and fishing licences; in Spain, individuals who hunt must request a licence for this activity in each Autonomous Community where they wish to engage in their hobby. There is no procedure for validating licences across ACs. Validation of hunting and fishing licences across ACs was one of the first issues these Meetings sought to address. ACs seem to have discovered areas where they perceive the advantages of collaboration. After 30 years of the State of

³⁴ Art. 115 Catalan Statute. The equivalent in the Statute of Andalusia: art. 43.

³⁵ STC 329/1993, FJ 3; STC 194/ 2004, FJ 8.

Autonomies, ACs may be mature enough to implement horizontal cooperation and horizontal cooperation instruments.

The Meetings between Autonomous Communities to develop the new statutes began in 2008, at the request of the government of the Autonomous Community of Aragon. They brought together the first six ACs with new statutes³⁶. It should be stressed that these were ACs governed by different political parties (PP, PSOE and nationalist party coalition governments). These fora were normally meetings between regional ministers from Departments of Presidency or Autonomous Community vice-presidents. The Meetings between ACs have not been attended by Autonomous Community presidents. These Meetings have been the first stable structure of multilateral horizontal cooperation in the State of Autonomies.

Between 2008 and 2010, eight Meetings were held between ACs and the frequency of these meetings has been constant (at least two per year). Moreover, the number of members from Autonomous Community governments has grown steadily, to the point where nearly all ACs (with or without a new statute) have participated in these Meetings.

The Meetings between ACs have advanced in two directions so far. First of all, there is a more political facet: an ‘early warning’ system has been developed within this group to detect if there is draft legislation by the central government that might encroach upon AC competences. Second of all, these Meetings have also served to agree on joint statements with a political value that express a point of view or make a request to the central government. In addition, in these fora, ACs have been able to identify areas for joint actions in order to increase efficiency and benefit citizens. As a result, multiple horizontal agreements have been reached, and these are the results of the Meetings between ACs that have most media impact.³⁷

These Meetings have not only been the main ‘producer’ of agreements in recent years, they have also changed the quality of horizontal relations in Spain. Until the Meetings were created, cooperation between Autonomous Communities was scarce, barely formalised and normally bilateral between neighbouring ACs. With the Meetings, multilateral cooperation between Autonomous Communities has also emerged in Spain. It should not be forgotten that the Meetings began with a small group of ACs (the first six to adopt new statutes). The number of participants has risen steadily and now includes most ACs. Thus, if this cooperation is confirmed, agreements may potentially be signed by all ACs.

The emergence of horizontal multilateralism is of crucial importance in the State of Autonomies. Previously, ACs had been unable to identify common areas of action or formalise the cooperation necessary to perform such action. The agreements between ACs resulting from these Meetings address ‘domestic’ issues focused on the recognition of licences and qualifications and on mutual assistance (e.g. validation across ACs of hunting and fishing licences and healthcare products, aid for battered women, etc.). In Spain, agreements between ACs are not legal provisions. Agreements do not create rights for third parties directly, for, as indicated, they are not a source of law in Spain. These agreements contain commitments to exchange information, coordination of criteria, rules on allocating financial costs and occasionally commitments to amend the laws of each Autonomous

³⁶ The Valencian Community, Catalonia, the Balearic Islands, Andalusia, Aragon, and Castilla y León.

³⁷ The ACs have created a website to make the work of these Meetings more visible: <http://www.comunidadesautonomas.org>

Community in the manner agreed. Harmonisation of legislation of regional institutions directly under a horizontal agreement does not exist in the State of Autonomies.

Compared to the development of this emerging multilateral cooperation between ACs occurring in 'domestic' affairs, the formal instruments of cooperation between them are still barely 'Europeanised', as will be seen later.

In December 2011, participants in the Meetings between ACs decided to continue with their activity but with the format of a Conference of Autonomous Community governments³⁸. The first meeting was in March 2011. It should be noted that the Conference was not attended by Autonomous Community presidents, as it normally brings together regional ministers from the Departments of Presidency or Autonomous Community vice-presidents. All ACs, with the exception of the Basque Country, took part in the first meeting. It is important to stress that this Conference is still only a political project. Horizontal cooperation is not easy in Spain. Horizontal relations require a learning period between the ACs themselves, and this type of structure requires strong political will and a consolidation period that only the future can confirm.

5. Internal cooperation in European affairs: more vertical cooperation and more horizontal cooperation?

5.1 The emergence of the European dimension of internal cooperation in the new statutes

The European Union is one of the main factors behind cooperation in all politically decentralised states, in particular in its vertical dimension. The central government represents the state's position in EU institutions in Brussels and is responsible for any breaches of the obligations of European law.

Spain joined the European Community in 1986. The Spanish Constitution of 1978 did not provide for the participation of ACs in European affairs. Unlike what has happened in other countries, European integration has not resulted in constitutional reform to regulate the participation of ACs in the integration process. This process was negotiated between the central government and the ACs within an *ad hoc* Conference, the Conference for European Union Affairs, created in 1988 and regulated by law in 1997³⁹. This Conference is comprised of the minister of Public Administration (from the central government), who presides over it, and the regional ministers responsible for European affairs (from the ACs).

The instruments employed to formalise Autonomous Community participation in European affairs have been successive political accords between the central government and the ACs.

With regard to AC involvement in establishing the position defended by the central government in Brussels, in 1994 the Conference for European Union Affairs passed the political Accord on Internal Participation of the ACs in European affairs via the Sectorial Conferences. It should be remembered that the Sectorial Conferences in Spain are vertical. As noted, there are neither horizontal Sectorial Conferences nor a Conference of Autonomous

³⁸ De Pedro Bonet, X. (2011). La Conferencia de Gobiernos de las Comunidades Autónomas. In: Tornos Mas, J. (dir.), Informe Comunidades Autónomas 2011. Instituto de Derecho Público. Barcelona, pp. 94-113.

³⁹ Central government Law 4/1997, of 13 March, creating the Conference for European Union Affairs.

Community presidents. Apart from the Sectorial Conferences, it is possible to create Bilateral Commissions between the central government and an Autonomous Community in European affairs to address issues exclusively relating to that Autonomous Community .

In 2004, and once again within the Conference for European Union Affairs, political Accords were approved allowing for direct participation of ACs in some formations of the Council of Ministers of the European Union.⁴⁰ The Sectorial Conferences must appoint an Autonomous Community representative who participates in the Spanish delegation before the Council of Ministers. Autonomous Community participation in state delegations in the Council represents a major advance. They have an important symbolic value, because this is a door that for a long time was closed to Autonomous Communities.

Since 2006, the statutes of autonomy have included European clauses that reflect Constitutional Court jurisprudence regarding Autonomous Community participation in European affairs and the contents of the political Accords of the Conference for European Union Affairs, but now in a legal provision. The new statutes regulate the internal decision-making process, the direct participation of ACs in European institutions, and the phase of implementation of European law. The peculiarity and the problem lie in the fact that the statutes can only regulate the participation of an Autonomous Community in European affairs (these are laws with limited territorial effectiveness), whilst the model of participation of the ACs is a multilateral procedure that must be regulated in the Constitution or in a central government law that does not yet exist.

5.2 Autonomous Community participation in decision-making: once again, the emergence of bilateralism-multilateralism

The most controversial aspect of the Statute of Catalonia of 2006 was Catalonia's involvement in deciding the Spanish state's positions with regard to the institutions in Brussels. In particular, two aspects have been especially controversial. First, the manners in which the Autonomous Community participates: bilateral in European issues that affect it exclusively, and multilateral in other circumstances. Second, the Statute sets out the nature and effects of this participation. Catalonia's stance is 'decisive' in forming Spain's position if the proposal affects exclusive competences or if there are potential financial or administrative consequences of special significance for Catalonia. If the central government opts not to share the view taken by the Autonomous Community, this must be explained before the Bilateral Commission. This option was reflected in the new statutes⁴¹.

The bilateralism-multilateralism tandem, a characteristic feature of Spanish cooperation relations, is also evident in relations between the central government and ACs in European matters. The bilateral route again appeals to the defence of one's own interests, and the European Union serves as one of the principal stimuli for promoting multilateral cooperation in Spain⁴². The dialectic between the quest for participation with all and the

⁴⁰ On direct participation, one may consult the web page of the Ministry of Territorial Policy (ACs and European Union): http://www.mpt.gob.es/es/areas/politica_autonomica/coop_multilateral_ccaa_ue/ccaa_y_ue.html.

⁴¹ Art. 186 and additional provision 2 of the Statute of Catalonia. In almost identical terms, the Statute of Andalusia (Art. 231).

⁴² Pérez Medina, J.M. (2009). Las relaciones de colaboración entre el Estado y las Comunidades Autónomas desde la perspectiva de la Administración General del Estado. *Revista Jurídica de Castilla y León*,

defence of regional interests is a characteristic feature of the system of Autonomous Community participation.

The Constitutional Court upheld that the forms of Catalonia's participation in European affairs were constitutional, with certain qualifications, as were the effects of such participation. According to the Court, the Statute of Catalonia limits bilateralism to particular situations and does not exclude multilateralism. The Constitutional Court also confirmed the constitutionality of the 'decisive' nature of the stance expressed by Catalonia in the above-mentioned cases, but qualifies this by saying that this stance is not 'binding'. Similarly, the duty to provide explanations before the Bilateral Commission only constitutes 'a mechanism of collaboration in cases when the interests of the Autonomous Community are especially affected'. In no event is the central government bound by the opinion of the Autonomous Community⁴³.

In practice, the participation of ACs in forming the positions of the Spanish state with regard to the European Union is achieved through the Sectorial Conferences, a mechanism of intergovernmental, multilateral, sectorial and vertical cooperation. The model of participation hinges upon an instrument that presents certain problems of practical functionality. The Sectorial Conferences are not true bodies for participation of ACs in internal state affairs or in European affairs. The central government voluntarily informs ACs about European projects. In the absence of formal structures of horizontal coordination between ACs, the central government meets with 17 ACs, each with its own agenda. The central government's presence in this format prevents the Sectorial Conferences from being the appropriate forum in Spain to discuss a common position of the ACs –which only they should decide upon– which might subsequently be communicated to the central government.

With regard to the Bilateral Commissions in European affairs, experience suggests that their role has been minimal. In the State of Autonomies, there have been three *ad hoc* Bilateral Commissions in the area of European affairs (with the Basque Country in 1995, with Catalonia in 1998 and with the Canary Islands in 2001)⁴⁴. In practice, these structures have been fairly inactive. Rather than the Autonomous Community's own issues, these fora have often addressed general questions of interest to an Autonomous Community. With the new statutes, the new Bilateral Commissions have also assumed the functions of monitoring European policy to ensure the effectiveness of the Autonomous Community's participation. For the time being, the activity of the new Bilateral Commissions in European issues has not been significant.

5.3 And the European Union as a factor in developing horizontal cooperation

European law is implemented and applied by ACs in those cases where they have competence. This was ruled by the Constitutional Court and is reflected in most of the new statutes. In practice, implementation of most European laws is undertaken by the central

No. 19 [número monográfico], pp. 353-354. Börzel, T.A. (2000). From Competitive Regionalism to Cooperative Federalism: The Europeanization of the Spanish State of the Autonomies. *Publius* 30:2, pp. 17-42.

⁴³ STC 31/2010, FJ 210.

⁴⁴ Roig Molés, E. (1999). Asimetría y participación autonómica en la formación de la voluntad española en asuntos de la UE: ¿participación a dos velocidades? *Revista Vasca de Administración Pública*. No 55, pp. 203-207. Cordal Rodríguez, C. (2010). Regiones, Länder y Comunidades Autónomas en la Unión Europea. Torculo Ed. Santiago, pp. 293-301.

government by virtue of its so-called horizontal competences (e.g. general legislation regulating the economy).

The Statute of Catalonia has been the only one to provide for the possibility of using multilateral cooperation between ACs to execute European law. If implementation corresponds to the ACs and requires measures extending across more than one AC, an attempt must be made at horizontal cooperation ‘via mechanisms of coordination or collaboration’⁴⁵. This provision reflects the jurisprudence of the Constitutional Court, mentioned above, according to which the central government may seize Autonomous Community competences for the simple reason that an action may affect various ACs.

The execution of European law through mechanisms of cooperation between Autonomous Communities might be an alternative to unilateral regulation by the central government. However, in practice, this option is not yet viable in Spain. Multilateral horizontal cooperation must be consolidated further in order to contemplate in the State of Autonomies a transposition of directives via cooperation between ACs⁴⁶.

Prior to the new statutes, the integration process fostered significant development of cooperation between ACs. Since 2004, ACs have had direct representation in the institutions of Brussels. Autonomous Community representation is carried out by including in the Spanish delegation a member, with the rank of regional minister, or a member of a Ministry of an Autonomous Community, who represents all Autonomous Communities in matters affecting their competences. The Sectorial Conferences between the central government and the ACs must appoint an Autonomous Community representative who forms part of the Spanish delegation before the Council of Ministers. This is boosting cooperation between Autonomous Communities in order to appoint the Autonomous Community representative.

The participation of Autonomous Communities through their offices in Brussels is strategic and has led to a great deal of informal cooperation between Autonomous Communities. In their offices, ACs are in much closer physical proximity, work together quite effectively and have prompted meetings that later take place in Spain to agree upon positions vis-à-vis the Council of Ministers of the European Union. In the same vein, it is also important to note the cooperation between ACs in the Committee of the Regions. In Spain, a meeting of Autonomous Community presidents has not (yet) been possible. However, these informal meetings are possible in the Committee of the Regions, because the Autonomous Community presidents are part of the Spanish delegation in the Committee.

Intergovernmental relations between ACs in projects involving cross-border cooperation with neighbouring regions of other states is an interesting phenomenon. There is hardly any institutionalised cooperation between ACs within Spain; however, ACs do meet up and cooperate in a stable manner with other European regions using cross-border cooperation programmes and instruments. This is the case of the Midi-Pyrenees Euroregion, where Catalonia, Aragon and the Balearic Islands meet on a permanent basis. Similarly, September 2010 saw the official creation of the Macroregion ‘Regions of South-west Europe’ comprised of Castilla y León, Galicia and North Portugal, the first Macroregion to be established on the

⁴⁵ Art. 189 of the Statute of Catalonia.

⁴⁶ García Morales, M.J. (2011). La prevención del incumplimiento del Derecho europeo en el Estado autonómico: instrumentos, posibilidades y límites. In: Biglino Campos, P., Delgado del Rincón, L. (dirs.). El incumplimiento del Derecho comunitario en el Estado autonómico. Prevención y responsabilidad. CEPC. Madrid, pp. 42-45.

Iberian Peninsula. This is an instrument of cooperation with a dual profile –inter-Autonomous Community and cross-border– which represents an attempt to create competitive spaces that transcend borders⁴⁷. Most of the new statutes contemplate cross-border cooperation as a kind of relation that lends prestige to the ACs and is easier to legally formalise than horizontal cooperation.

6. Future perspectives: a new legal framework, a landmark ruling... and what next?

The new statutes and the Constitutional Court have proposed some legal ground rules for cooperation relations in Spain. In 2006, a reform of the statutes of autonomy addressed these relations. The Constitutional Court's ruling regarding the Statute of Catalonia of 2010 is a landmark ruling, as it examines not only a statute, but a proposed revision of the State of Autonomies. This ruling confirms the constitutionality of how the Statute regulates cooperation relations with legal and political consequences that go beyond the Catalan legislation. The intended innovations in the area of cooperation are the result of second-generation statutes, not of the Constitutional Court ruling. These innovations are few and far between, are mainly to be found in the vertical dimension of cooperation and basically serve to reinforce bilateralism through the Bilateral Commission and the new rights of Autonomous Community participation.

This new legal setting has generated expectations of change for cooperation in Spain. However, law plays a minor role. Experience has shown that legal regulation of instruments of cooperation in the State of Autonomies guarantees neither changes nor their effectiveness. The responsibility for change lies with the participants of intergovernmental relations, governments and senior officials. At the moment, cooperation in the State of Autonomies is at a crossroads: there are differing opinions that may lead to different results, depending on the path chosen.

As far as the vertical dimension is concerned, the new statutes do not regulate multilateral cooperation. Its regulatory framework is in a central government law that grants the central government considerable power to direct multilateral instruments, power which has been confirmed by the Constitutional Court, but also agreed to and requested by the ACs. With regard to the specific instruments, the Conference of Presidents is currently an instrument with an uncertain future. On 20 November 2011, there was a general election won by the conservative Popular Party. The future president of the government along with the presidents of the ACs will have to decide the fate of this instrument.

Most decentralised countries around us have a Conference of Presidents that works closely with the Sectorial Conferences. For this reason, one of the peculiarities of cooperation in Spain is the existence of Sectorial Conferences without a cooperation body at the highest level. The Sectorial Conferences are the most consolidated instruments of cooperation in the State of Autonomies. However, in many cases, the ACs attend out of institutional duty and with limited conviction as to the usefulness of the Conferences, as they are platforms where the central government outlines its projects or distributes money to the ACs. The challenge is

⁴⁷ Benz, A. (2007). Inter-Regional Competition in Co-operative Federalism: New Modes of Multi-level Governance in Germany. *Regional & Federal Studies*, No. 4, pp. 421-436.

for these Conferences to become genuine instruments for participation of ACs in state politics.

The big question posed by the new legal setting is whether bilateralism will be reinforced in Spanish intergovernmental relations. To date, regulation of the Bilateral Commissions in the new statutes has not resulted in different activity or dynamics in the non-statutory Bilateral Commissions. Previous experience shows that the Bilateral Commissions have not been an instrument of the State of Autonomies that has replaced multilateralism. On the contrary, many Bilateral Commissions have been formal structures that have rarely met, and those that have met have played a complementary and secondary role with regard to multilateral instruments. Experience also shows that it is not easy to find issues to be dealt with exclusively in a bilateral manner in these Commissions. In many cases, bilateral demands are made which are likely to be addressed in multilateral fora with all Autonomous Communities.

The Bilateral Commissions and the agreements reached in them do not rule out possible asymmetries between ACs. This possibility is counterbalanced by the tendency towards emulation in the State of Autonomies, emulation between Autonomous Communities occurring in the creation of the instrument, in its regulation in the statute and even in the dynamics of each Commission. All ACs have a Bilateral Commission with the central government, while the Statute of Catalonia of 2006 provides for a Bilateral Commission with the central government that has been imported into other statutes. Moreover, the Bilateral Commissions have a similar practical activity. Regulation of the Bilateral Commissions in a statute of autonomy has made them more visible, but it has not ensured their success. The new Bilateral Commissions may run the risk of becoming, as occurred in their earlier phase, a merely formal structure that is little more than symbolic.

In matters of horizontal cooperation, the new statutes of autonomy represent a major paradox. They seek to stimulate cooperation between Autonomous Communities, but the legal design of horizontal instruments (in particular, the agreements between ACs) in the new statutes has scarcely been modified and reproduces old problems. The new statutes have introduced few legal changes, but have generated a political will that has placed multilateral cooperation between the ACs on the agenda of Autonomous Community governments. For the time being, there are signs of change which only time will confirm as having been merely an attempt to change things or a very real and significant change in cooperation relations.

The most noticeable changes in Spanish intergovernmental relations may arise from a clear and sustained promotion of horizontal cooperation. The absence in Spain of solid horizontal cooperation strengthens the central government and allows it to clearly lead cooperation in Spain. Horizontal cooperation requires the creation and consolidation of cooperation bodies that provide stability and institutionalise this kind of relationship between ACs. The experience of other European countries shows that horizontal relations can help increase efficiency in the State of Autonomies, prevent the recentralisation of competences and achieve effective participation of the ACs in state and EU policies. Indeed, the European Union has been and presumably will continue to be an important stimulus for the development of multilateral cooperation between ACs and also between ACs and the central government.

In these pages I have analysed the role of law and, in particular, the role of the new statutes and of the Constitutional Court in how cooperation is shaped in Spain.

Intergovernmental relations are obviously much more than formal instruments with a specific legal regulation. Informal cooperation in Spain exists and could be as important as its formal counterpart. The process of statutory reforms has finished for now in a political and economic context that is totally different from that in which it began. General elections and Autonomous Community elections in most ACs were held in 2011, with victories for the Popular Party. Furthermore, the global economic crisis that began three years ago has been especially severe in Spain. The impact of this almost total political homogeneity between the central government and the governments of the ACs remains to be seen, as does the impact of an international economic crisis on domestic cooperative relations. Politics and economics will undoubtedly be fundamental in any discussion in coming years of continuity or changes in cooperation in the State of Autonomies.