

Chapter 12

The Empowerment of Local Democracy and Decentralisation of Service Delivery in Local Government Reform: Evidence from Portugal

Carlos Nunes Silva

Abstract Local government reforms in Europe over the last few decades show a gap between central government promises of decentralisation and practice. The political rhetoric of central government favours increased local government autonomy and supports the growth of local democracy. This contrasts with a de facto centralising trend, whereby central government defines the priorities and targets of local government. In many countries, local funding powers remain limited, and central government remains the main source of local government revenue. This chapter examines recent changes in the structure, functions, finance, and regulation of central-local relations, in Portugal, in the period from 2005 to 2009, up to the onset of the 2009 financial crisis. In 2000, a newly elected government promised and implemented significant reforms to local government. The government promised increased local autonomy and the empowerment of local democracy, local government expectations. At the same time, the government also created new inter-municipal institutions to be responsible for planning and other specialist functions, particularly the administration of regional transportation systems. The government also strengthened regional identities by harmonising judicial and administrative regions. The evidence suggests the existence of a mixed trend. Service delivery has been somewhat decentralised, mediated by central government. However, issues of local democracy and the participatory rights of local citizens were relatively neglected. Decentralisation took place alongside a centralising trend, associated with institutional reorganisation and with changes in the legal framework of key components of the spatial planning system. Direct control by central government of local government was replaced by indirect control through regulations. Local governments remain restricted in their ability to challenge legislative decisions, and decisions affecting local competences and budgets are often taken by state

C.N. Silva (✉)

Institute of Geography and Spatial Planning, Universidade de Lisboa, Edifício da Faculdade de Letras, Alameda da Universidade, 1600-214 Lisbon, Portugal
e-mail: cs@campus.ul.pt

budgetary institutions rather than by the national legislature. The evidence also suggests that the response to the fiscal crisis inhibited the full development of local autonomy.

Keywords Local government empowerment • Devolution • Local government reform

Introduction

Local government reforms in Europe in recent decades suggest the existence of a gap between central government political discourse on decentralisation and its practice (Lowndes 2002; Tranvik and Fimreite 2006; Wollmann 2004). The political rhetoric of central government in favour of increased local government autonomy in support of an empowerment of local democracy has been followed in Europe by a trend towards the definition, by central government, of priorities and targets for local government (Fleurke and Willemsse 2006). This contradicts the notion of local self-government and local political autonomy, a situation in which local councillors are supposed to decide policies, targets, and priorities based on the preferences of local citizens.

Building on this background, the chapter examines recent changes in the structure, functions, finance, and regulation of central-local relations, in Portugal, in the period from 2005 to 2009, corresponding to the XVII Constitutional Government, supported by an overall majority of the Socialist Party in the national parliament. In doing so, it addresses the following research question: has the reform or ‘modernisation’ of local government, proposed by central government, in 2005, and implemented in the following years, enhanced local government political autonomy and empowered local democracy or was it mainly a decentralisation of service delivery from the state to the municipalities?

In Portugal, the local government institutional framework is still based on the 1976 Constitution. The constitution was adopted after the overthrow of the dictatorship in 1974. Despite seven constitutional revisions, in 1982, 1989, 1992, 1997, 2001, 2004, and 2005 (CRP 2005), and calls for a further revision between 2009 and 2013, the level of control assigned to central government and the level of autonomy provided to local government are unchanged (Silva 2004, 2006, 2009a). In addition, the call-for regional tier of self-government has not yet been implemented. According to the XVII Government’s programme (PCM 2005a, b, c), the creation of Administrative Regions was to be made through a national referendum, taking into consideration the five planning regions in mainland, corresponding to the 5 NUTS 2 regions. At the same time, there was to be a reorganisation of the deconcentrated departments of central government, according to the same regional map, as well as the reinforcement and stabilisation of the CCDR functions (CCDR, Comissão de Coordenação e Desenvolvimento Regional—Regional Planning Commissions, one for each NUTS 2, except in the two autonomous regions: Azores

and Madeira), to enable the coordination of central government policies at the regional scale. For these reasons, continuity rather than rupture is the main feature that emerges when we examine what happened in the last three decades in the vertical structure of the State. The local electoral system, the internal structure of municipalities and parishes, the portfolio of municipal competences, and the local finance system have experienced changes, of one sort or another, but none represented a rupture with what was defined in the 1976 Constitution and in the common legislation that followed it. The same can be said about numerous policy areas under the direct responsibility of local government. However, the political discourse in this period has favoured more decentralisation, and successive local government reforms were intended to increase local autonomy and the share of local government in the public administration sector and to improve local democracy, in particular citizen engagement in local politics. This does not mean that local decision-making became less constrained by central government or that there has been a continuous expansion of local autonomy resulting in more advanced forms of self-government. On the contrary, evidence suggests a centralising trend in the context of new managerial practices, in which central government retains an important control role, by setting up the core values and priorities, for example, within EU funding schemes, or in central-local partnerships at the municipal level. This is similar to what has been found in other European countries (Goldsmith 2002; Fleurke and Willemse 2006; Denters and Rose 2005; Geddes 2006).

In addition, and besides these types of formal control, central government can exercise control by other means, perhaps more informal. These include the control of local government income and expenditure through the local finance system (Oulasvirta and Turala 2009), administrative regulations and standards (e.g. through the nature of school curriculum and activities, types of social services, etc.), and the level of access to central government decision-making. In other words, there has been a move from the prevalence of forms of direct to those based on indirect control through innumerable central government regulations, a move also found in other European countries (Goldsmith 2002; McAteer and Bennett 2005) and in other parts of the world (Chandler 2005). Notwithstanding this, the system continues to be based on the principle of general competences and on the right to self-government.

Consequently, central government retains a major influence in local government policies, not just in financial terms but also through numerous and detailed norms and regulations, despite the political rhetoric on decentralisation.

Central Government Policy in the Period 2005–2009: Goals and Proposals

Portuguese local government is based on the principle of general competence and as such can adapt its policies to changing circumstances. One of the public administration goals of the XVII Constitutional Government (2005–2009) was the reform or ‘modernisation’ of local government, which included the transfer of more

competences to municipalities and parishes along with the corresponding financial resources, strengthening the traditional multifunction model of local government (PCM 2005a) especially Chapter III, section 'VI. Modernizar a Administração Territorial Autárquica', pp. 126–129: Modernisation of Local Government). The following constitutional government (2009–...), supported again by the Socialist Party, maintained most of the goals established in 2005, in the field of local government reform (PCM 2009: chapter V – Administração autárquica – Aprofundar a descentralização, uma administração autárquica para o Séc. XXI – Local government – Deepening decentralisation, a local government for the XXI Century, pp. 95–98). Decentralisation of new competences focused on basic infrastructure (sewage and waste), social equipment, the urban environment, and social policy (old people, health, drug addition, education, professional training, children, immigrants, and disabled people).

In some of these cases, particularly in the social policy field (e.g. primary education), the main goal appears to have been streamlining the local delivery of social services rather than enhancing local democracy and municipal political autonomy. As the evidence available shows, unitarian welfare states tend to be the sole provider of welfare services (Tranvik and Fimreite 2006), making local government responsible for the delivery of these services, while the central level continues to define targets and standards. In other words, when, as in the case of social services decentralised to municipalities, service standards are established by central government (e.g. some functions within primary education), municipalities cannot establish priorities according to their independent political will. The decentralisation of managerial competences in the field of social equipment and social services and in other policy sectors is important for empowering local government, but this does not necessarily mean strengthening truly local self-government, as defined in the Constitution.

The traditional strategy adopted by central government was to achieve certain policy goals (e.g., in the field of urban regeneration, housing rehabilitation, social services, etc.), through special programmes, targeted at sectors or areas with problems. This was also followed by the government elected in 2005 (e.g., within its policy for cities 'Política de Cidades – Polis XXI, 2008-13', adopted in April 2007, following previous programmes such as PROSIURB, POLIS, URBAN, etc.), a practice adopted in other countries. Wollmann (2004), for example, refers the case of France, where central-local relations make extensive use of this approach to policy-making through projects or programmes, definition of local targets, and contracts. Nonetheless, the possibility for local government to use specific central government programmes, such as those in the broad field of urban regeneration, presented new opportunities for municipal spatial planning and municipal housing policies. However, the objectives and standards were defined by central government, which, according to the criteria of Fleurke and Willemsse (2006), is not the same as an increase in local self-government autonomy. Local councillors, as noted, were not in a position to decide priorities and targets based on the preferences of local citizens.

A second target for the reform or ‘modernisation’ of local government was the local finance system, in particular the size of the block grant and other fiscal revenues. This was expected to make municipalities financially stronger and more independent. In the end, the dependence of municipalities on revenues from loans and building construction taxes was to be reduced, without lowering the existing level of local financial resources (see PCM 2005a, Chapter III, Section VI – *Modernizar a Administração Territorial Autárquica*). In practice, due to the financial crisis which started in 2009, and despite the decentralist tone of political discourse, on both the income and the expenditure sides, the central government exerted additional control over local government, deciding the level of unconditional and conditional grants.

A third area of reform was local government internal organisation (institutional framework, debureaucratisation, e-government, professional training, etc.). This included relations between municipalities and other public and private entities, such as municipal and inter-municipal enterprises, public-private partnerships, and municipal concessions. Paradoxically, this complex web of organisations that makes up the new local governance landscape, and which is responsible for delivering public services at the municipal level, has expanded in the last few decades and represents, to some extent, a dilution of municipal autonomy. The adoption of policies, priorities, and targets is not done solely by its elected representatives, based on the preferences of local citizens, but by other organisations as well or through complex networks of central-local and public-private institutions.

A fourth objective of central government had to do with the gradual implementation of a new model of local governance, including a new local political leadership model, based on homogeneous political executives and on deliberative boards with more powers to control the activity of the executive and on effective inter-municipal forms of cooperation. (For a comparison with other local political leadership models, see Berg and Rao 2005.) It proposed, for municipalities, a parliamentary system with executives elected by majority representation instead of the present direct election of the executive and proportional representation (Silva 2009a). Since 2005, the president of the executive council cannot be re-elected more than twice (three consecutive terms or 12 years). This restriction applied only to Mayors and Parish Council chairpersons, and after four years, they could again run for the same posts. In 2006, new legislation was adopted introducing the principle of gender parity in electoral lists (Law 3/2006, 21.08.2006). A minimum quota of 33.3 % was set for each sex in the electoral list. This quota was not compulsory in small parishes with less than 750 inhabitants, or in small municipalities with less than 7,500 inhabitants.

Inter-municipal relations were another target in the reform of local government. The Gam-ComUrb model, implemented by the previous social-democrat governments, was unanimously considered inadequate by all stakeholders (Silva 2002, 2006). However, the proposed new forms of municipal associations for the metropolitan areas continued to lack political legitimacy as they are elected indirectly by the members of the municipal assemblies.

Central-Local Relations in Practice

Despite the overall political commitment towards decentralisation from central to local government, clearly articulated in the programme of the XVII Constitutional Government, in practice central-local relations experienced ups and downs in the 2005–2009 period. Considering the public statements made by the ANMP, it seems that for municipalities, the outcome of the reform fell short compared to what was expected. Nonetheless, in some policy areas, decisions taken by central government strengthened the autonomy of municipalities (e.g. in the creation of municipal police), while other decisions expanded municipal competences (e.g. in the education sector). However, in other cases decisions taken by central government implied a reduction of local government resources and its capacity to intervene or would have implied that if implemented (e.g. the proposed new ‘Regime Geral dos bens do domínio público do Estado, das Regiões Autónomas e das Autarquias Locais’). In addition, in some policy areas, municipalities found themselves subject to new and different forms of control by the EU regulations, especially through monitoring, evaluation, and financial control on the use of EU funds received by the municipalities.

In the first case, reinforcement of municipal autonomy, the central government implemented its plan for the decentralisation of competences and the corresponding resources in a number of sectors. One example is the transfer of competences in the education sector, including the decentralisation of competences related to nonteaching staff and school buildings at the 2nd and 3rd education levels and additional activities to enrich the normal academic curriculum. However, at the end of 2008, the ANMP considered that the number of municipalities involved – 90 – and the activities/competences transferred was less than what they expected.

In other cases, the decentralisation of new competences was supported by research and planning as a first step for further decentralisation in the field of social policy. One example was the decision to prepare municipal social charters, ‘Cartas Sociais Municipais’, expected to be concluded in 2011 for each municipality, including an inventory of all social equipment needed for children, old citizens, disabled persons, and actions to be taken against social exclusion. Another example is the introduction of monitoring and evaluation procedures in these policy fields. For example, the Observatory of Decentralisation and Local Education Policies, a partnership between central government, municipalities, and university research centres, was created in 2009. This Observatory was created to monitor the transfer of competences from central government to the municipalities in the education sector (OPLE 2009). Another facet was the participation of municipalities in central government policy programmes, although without direct involvement in the decision-making process, such as the participation of municipalities in ‘Contratos Locais de Segurança’ (CLS). This included only the provision of local information, identification of local issues in the field of community safety, and related issues. A protocol between central government and the ANMP was signed in August 2008. One contract had already been signed with the municipality of Oporto. However, one year later, in July 2009, only 20 CLS had been signed in 7 out of 18 districts.

Local autonomy was also expanded through the revision of existing national policy programmes and projects. One example is the programme for the creation of municipal police forces. The requirement for a contract between central and local government was abolished. Under these contracts, central government covered the cost of police operations. In practice, due to lack of financial resources, only a small number of municipalities were able to create their own police organisation. By 2008, only 30 contracts had been signed between central government and municipalities for the creation of Municipal Police, and only 2 had received financial support from central government. The decision to abandon the requirement of a central-local government contract and an increase in the proportion of road fines retained by the municipality from 30 to 55 % (According to Decret-Law 197/2008, article 7) allowed much greater autonomy than the previous legal framework (Decret-Law 197/2008, 7.10.2008).

Notwithstanding these positive developments, central-local relations in this period were also marked by moves towards increased centralisation. At least in three cases municipalities and their national association reacted vigorously against the withdrawal of municipalities from key positions in the regional or local institutional structures belonging to central government. One example is the reorganisation of ICNB (Instituto da Conservação da Natureza e Biodiversidade/ Institute for Conservation and Biodiversity), implemented by the XVII Constitutional Government. Formerly, municipalities were represented on both the Board of Directors and the Consultative Board. In the new legal framework (Decret-Law 136/2007, 27.04.2007; Portaria 530/2007, 30.04.2007), municipalities were only to be members of the 'Strategic Council of the Protected Area', a purely consultative board. This reduced the already small influence municipalities had in the management of protected areas. In addition to this loss of ability to influence policy-making within protected areas, some new ICNB powers have the potential to override municipal competences in the field of spatial planning inside protected areas. This has caused central-local conflicts in the past; they are likely to continue and increase in the coming future.

A second illustration of this loss of local government influence is the reform of Tourism Regions, approved in 2008 (Decret-Law 67/2008, 10.04.2008). There was disagreement about the organisation of regional divisions in this sector, which includes five regions and six Poles of Tourism Development. The ANMP was in favour of just five tourism regions, coincident with the five planning regions in mainland Portugal. Municipalities were somewhat disappointed with the reduction in the number of municipal representatives on the boards of these new entities (e.g. the ANMP argued that at least 50 % of the Assembly members should be mayors).

A third example was the delay in forming 'Regional Councils', a structure within the CCDR (the Regional Planning Commissions), in which municipalities are represented. Decret-Law 134/2007, 27.04.2007, defines the organisation and competencies of the CCDR. Regional councils were slow to form. At the start of 2008, the regional councils had still not been created, and the ANMP made public the dissatisfaction of municipalities with that fact. By April 2008, only the Regional Council in Região Norte/Northern Region had been constituted. Among other aspects, the delay

in the implementation of the regional councils prevented municipalities from participating as a group in decisions about the implementation of major investment projects in their region which had been approved by central government under a special regime (the so-called PIN – *Projectos de Interesse Nacional*) (Decret-Law 174/2008, 26.08.2008). They were also unable to participate in the coordination of public investments in their region, as well as in the preparation of regional development plans, sector plans, or regional spatial plans, developed and implemented by central government for the region or for some subregions. Also, due to this, municipalities were not formally involved in the preparation of PIDDAC - *Plano de Investimento e de Despesas de Desenvolvimento da Administração Central*, the annual central government investment plan. This plan defines which investments will be made by central government in each municipality.

There was also strong opposition from the national local government association (ANMP) towards decisions taken by central government in areas that fall outside the competences of municipalities such as reforms of the spatial organisation of the judicial system and the reorganisation of the network of local health centres (Decret-Law 28/2008, 22.02.2008; Decret-Law 81/2009, 2.04.2009), which were defined and implemented despite alternative proposals made by the ANMP. The spatial organisation of the judicial systems was to have five districts coincident with the limits of the five planning regions, expected to coincide in the future with the five administrative regions. These five districts had a total of 39 divisions, called ‘*Comarca*’, a clear reduction in the number of courts (Proposal of Law 124/2008, 12.03.2008).

Central-local relations were also affected during this period due to changes in the planning legislation. New legislation on the ecological and agricultural reserves (REN – *Reserva Ecológica Nacional* (National Ecological Reserve) (Decret-Law 166/2008, 22.08.2008); RAN – *Reserva Agrícola Nacional* (National Agriculture Reserve) (Decret-Law 73/2009, 31.03.2009)) gave more powers to technical departments within central government and did not strengthen the competences of the municipalities, as one would have expected from the political statements of central government.

In addition to these direct impacts on local governments’ capacity to influence public decision-making within the spatial planning system, legal norms and the institutional reform of the ICNB will probably impact on the fluidity of the already highly complex local planning system (Silva 2000).

According to the Constitution, central government shall pass new legislation on key issues for local government only after consultation with the National Association of Municipalities (ANMP). On numerous occasions, the ANMP claimed to have had a very short period of time to comment new legislation proposals submitted by central government according to the Constitution. That was the case, for example, with the new law proposed by central government for the planning and management of harbour areas, which would, from the ANMP point of view, interfere with and reduce municipalities’ spatial planning competences. Municipalities argued that the planning and management of harbour areas needs to be articulated and subordinated to municipal spatial master plans and other municipal spatial planning instruments.

Another example is the decision to adopt control development around the future Lisbon International Airport, in Alcochete, taken without consulting the national association of municipalities (ANMP), as is required by law (Law 54/98, 18.08.1998, article 4). On other occasions, this consultation process has been perceived and treated as mere formality. For these reasons, this is another area in which reform and improvements seem to be necessary. Associated with this is the request that municipalities should be heard before major public works are decided by central government within their territory.

Crossing this debate on centralisation-decentralisation are two key dimensions of local government institutional architecture: the local finance system and the inter-municipal cooperation model. The local finance system has always been a key area in central-local relations. In this period (2005–2009), despite the approval of a new local finance law, in 2007 (Law 2/2007, 15.01.2007, Local Finance Law), a number of problems continued to affect municipalities' financial capacity. In the new local finance system, municipalities became entitled to a transfer of up to 5 % of IRS (personal income tax), as part of the non-conditional transfer from central state budget to municipal budgets. Since then, delays in the monthly transfer have led to repeated protests by the ANMP, especially because in some cases this is an important or even a vital component of the municipal revenue. The total amount of unpaid transfers, in January 2010, was estimated at 33 million Euros, by the ANMP. In addition to this, central government decided not to transfer the 5 % of IRS to municipalities in the Autonomous Regions of Azores and Madeira, based on the argument that it is now the responsibility of their Regional Governments, as the IRS collected in those two autonomous regions became part of the income of the Autonomous Regions (Law 1/2007, 19.02.2007, Regional Finance Law). In addition, the need to balance the national budget, and the resultant cutbacks in spending due to the financial crisis from 2009 onwards, had an impact in the implementation of the new local finance system. In response, the ANMP proposed, in 2009, the creation of a Fund for Local Investment as an instrument to support local economies affected by the 2008–2009 financial and economic crisis (ANMP 2009). For these reasons, the reform of local finance system did not represent a radical departure from the previous situation. Continuity rather than rupture is the main characteristic. Nonetheless, while in theory the proposed changes seemed to represent progress for municipal autonomy, in practice, the consequence may have been more centralism, as the complaints made regularly by the national local government association suggest.

For inter-municipal cooperation, one of the objectives of the programme of XVII Constitutional Government was the abolition of the previous institutional framework, and the introduction of new forms of inter-municipal associations (Silva 2002, 2006) contains an overview of the previous inter-municipal model, also known as the Gam-ComUrb model. In 2008, the central government transferred competences to new inter-municipal associations. This was partly related to the implementation of the municipal component in the QREN. QREN is the acronym for Quadro de Referência Estratégico Nacional (National Strategic Reference Framework). It is the framework for the European Union financial support to Portugal, in the period 2007–2013. About 70 % of all investments in the QREN

regional programmes are municipal investments, to be coordinated by the new municipal associations, organised according to geographical divisions based on NUTS 2 and NUTS 3 regions (defined in Decret-Law 68/2008, 14.04.2008), based on NUTS 2 and NUTS 3 divisions. However, municipal associations continued to lack adequate resources to properly function and execute their responsibilities within the QREN, as well as in other areas, such as urban regeneration programmes, water and waste infrastructure, renewable energy projects, supra-municipal transport networks, and development plans.

Although this was an important step in the decentralisation process, the decision was taken two years later than that of fiscal decentralisation, and for that reason, municipalities will have a shorter period (two years less) to carry out investments (2009–2013, instead of 2007–2013), requiring a higher annual municipal investment level. As a result of this, municipalities will need easier access to credit, for these investments within the QREN, and municipal participation in the same investments may be lower (see also ANMP 2010). According to ANMP, these loans are neutral for the public deficit. At the end of 2008, no contract had been signed by municipal associations within the QREN. In part, this was partly due to delays in the constitution of the new municipal associations based on the NUTS 3 region. The ANMP recommended, on several occasions, that municipalities should join these associations, as soon as possible, as a precondition for the development of this process.

Central-local relations have also been affected by delays in the implementation of other supra-municipal institutional structures. This is the case, for example, of the AMT (Autoridade Metropolitana de Transportes/Metropolitan Transport Authorities), a process inherited from previous governments. From the central government's point of view, the creation of these transport authorities is seen as decentralisation, but for municipalities, it can imply further centralisation in the sense that it will be another higher tier with functional control of this sector and of municipal spatial planning, namely, in setting up planning goals for transport infrastructures and services. This is taking place in a sector which is already highly centralised (Silva 2009b).

In addition to these positive and negative developments in the framework of central-local relations, there are a number of other issues that if changed would improve the autonomy and capacity of municipalities. Municipalities should be able to directly address the Constitutional Court on issues related to local government when the legislation adopted by central government is considered unconstitutional. This is increasingly important, as central control over local government tends to move, as in other European countries, from direct formal control to indirect control through regulations. If municipalities are allowed to challenge legislation, that would reinforce the capacity of municipalities and of their national association to react against policy measures that reduce municipal autonomy and harm the interests of local citizens.

Municipalities also argue that revising or amending basic local government legislation (e.g. the legislation on competences and on local finance) through decisions taken within the annual state budget should not be allowed. This practice indirectly

reduces local autonomy, a pattern also found in other European countries. The local government's legal framework should only be revised by an overall qualified majority in the national parliament. In addition, the supervision and the control of the legality of municipal actions should be the sole responsibility of an independent entity and not, as it is now, a competence shared by courts and central government departments.

Conclusion

The evidence examined in this chapter suggests that the local government reform was not as radical as anticipated by municipalities, considering the public statements made by the local government association, on many occasions. It seems that more radical progresses towards full local autonomy and a greater degree of self-government were expected by Portuguese municipalities. The gap between political discourse and the practice of central government in several areas within central-local relations is probably the result of the prevailing economic and financial conditions in this period, namely, budget constraints, as well as traditional power asymmetries in central-local relations.

Another conclusion, found in other European countries, suggests that central government increasingly exercises control through detailed administrative regulations for the implementation of specific policies and the approval of municipal projects by central government departments, especially within the EU financial framework, and through strict financial regulations. Additionally, there has been a shift from direct hierarchical and formal control to indirect forms associated with central-local partnerships, both public-public and public-private. In other words, there is an ongoing move from a relatively clear division of power between central and local government levels, as established in the Constitution and in the Local Government Act, to a more complex network of central-local cooperation. This has been described as a move from local government to local governance, in which municipalities are just one of several agencies responsible for delivering public services.

In sum, the evidence collected in this exploratory study suggests a mixed trend. The level of service delivery has decentralised, in part controlled by central government, which remains responsible for setting national priorities and targets for these programmes and projects, and there has been a centralising trend associated with institutional reorganisations and with changes in the legal framework of key components of the spatial planning system. Contrary to what we could anticipate from Socialist Party political discourse on local government 'modernisation', issues of local democracy and participatory rights of local citizens have not received the same priority within the overall local government reform. While growth and improvement of local service delivery is a vital dimension for a more balanced central-local relationship, it is equally important to enhance local democracy, promoting community participation in service provision and in goal setting as well.

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