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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**COMMENTS ON
THE DRAFT REVISION OF THE CONSTITUTION
OF MEXICO**

by

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1. The following comments concern the draft revision of the Mexican Constitution, presented by Senator Cesar Camacho Quiroz (CDL-FED (2002) 1). The main aim of the proposed revision is to strengthen the federative structure and especially to enhance the position of the federative entities (the States).

2. The Constitution includes several provisions on the federative structure. Second Title, Chapter II, contains provisions on “the Parts that Comprise the Federation” and on the national territory. The states are enumerated in Art. 44, and the status of Mexico City as the Federal District is established in Art. 45. Art. 73 (Third Title, Chapter II) regulates the powers of the Congress. Although it is not explicitly stated, these powers apparently are exclusive in character. The provisions on the states are included in Fifth Title (“Of the State of the Federation and the Federal District”; Art. 115-122). Finally, according to Art. 124 (Seventh Title “General Topics), “the powers that are not expressly conceded by this Constitution to federal officials are understood to be reserved to the States”.

3. According to Art. 105, par. I, constitutional controversies concerning the respective powers of the Federation, the States, the Federal District and the municipalities belong to the competence of the Federal Supreme Court.

4. Art. 124 expresses the starting-point in the distribution of competences between the Federation and the States: the residual powers belong to the States, and the competence of the Federation covers only the powers expressly conceded by the Constitution. According to the draft revision, this provision will be retained. However, another paragraph, laying down concurrent powers of the Federation, the States and the municipalities, would be added to Art. 124. The concurrent powers would cover quite large areas, such as education, health, communication, environment and agriculture. Such a large field of concurrent powers can easily lead to controversies between the Federation and regional entities, especially if the Constitution does not include any guidelines with respect to the exercise of these powers. Questions that are left open include: do federal regulations have a pre-emptive effect with regard to the competence of the States and the municipalities? Is the competence of the Federation restricted to framework laws or may it also enact more detailed provisions?

5. It is to be noted that in the relations between the Federation and the Federal District (Mexico City), the distribution of competences seems to be regulated in another way. Thus Art. 122, par. I o) seems to provide that Federal District only enjoys powers expressly conceded to it by the Constitution, while the residual powers belong to the Federation. The draft revision does not propose changes to this rule. The reason for different solutions in the relations between the Federation and the States and in those between the Federation and the Federal District are not clear.

6. The distribution of powers between the Federation and the States would be further complicated by the provision which, according to the draft revision, would be added to Art. 116. This provision would lay down that the federal entities would have “declarative if not limitative, exclusive faculties” in certain fields. What “declarative if not limitative, exclusive faculties” mean is not clear. In addition, the proposed provision states that these faculties would depend on laws that local legislatures enact. The wording of the proposal at least makes possible the interpretation that the local legislatures could themselves decide on the scope of their legislative powers. Such a system cannot be recommended.

7. Finally, the Constitution involves even a provision which explicitly denies the States certain powers (Art. 117), as well as a provision on powers whose exercise requires the consent of Congress of the Union (Art. 118). As a conclusion, the present regulation of the distribution of powers is very complicated and fragmented. The proposed changes and amendments would not solve this problem. On the contrary, through the new provision on the concurrent powers (Art. 124), the proposed revision could even further aggravate it. The relations in question should be regulated in the Constitution in a concentrated and clear way. Attention should also be paid to the fact that Mexico does not have a Constitutional Court which could be given the power to solve conflicts of competence; these fall under the jurisdiction of the Supreme Court.

8. The draft revision includes some proposals concerning Art. 73, which, according to the interpretation presented above, lays down the exclusive powers of the Federation (the Congress). The provision gives the Congress exclusive powers in the fields of the settlement of uncultivated land and archaeological, artistic and historical monuments. These areas are included in the list of concurrent powers, proposed as a new paragraph of Art. 124. If the proposed provision in Art. 124 is accepted, corresponding changes in Art. 73 are of course needed.

9. In addition, a change to the provision in Art. 73 (par. XXIX) concerning the distribution of certain specific taxes and fees between the Federation, the States and the municipalities is proposed. The provision in force states that "federal entities will participate in the sharing of these fees, in the proportion that secondary federal law determines. State legislatures will set the percentage of these fees which the municipalities receive, taking into account the tax for electrical energy." The new provision would also contain some general principles and criteria to be followed in the distribution, such as the principles of equity and justice, which would be specified by using criteria like the size of the population, and economic and social situation.

10. Financial relations between the Federation and regional and local entities are crucial in determining the real level of autonomy. It is perhaps a surprise that in a constitution, which in certain respects relies on very detailed provisions, these relations are only guided through vague regulations. The proposed amendment, with its very general principles and criteria, does not suffice to solve the problem. The financial relations and respective powers of the Federation and the regional and local entities should be surveyed as a whole.

11. The Mexican Constitution is a very complicated and, at least in certain issues, overly detailed document. This in itself gives reason to doubt whether the revision of only certain individual provisions will lead to a satisfactory result.