



## Article 93 as a European clause in the Spanish Constitution

**Andrzej Jackiewicz**

University of Białystok, Poland

[jackiewicz@umb.edu.pl](mailto:jackiewicz@umb.edu.pl)

ORCID [0000-0001-6957-3139](https://orcid.org/0000-0001-6957-3139)

**Abstract.** The purpose of this article is to answer the question of the legal nature of the European clause contained in the Spanish Constitution. The article examines how it has influenced the process of European integration and the constitutional order in that country. This has been done by analysing the provisions of the Spanish Constitution and the jurisprudence of the Constitutional Tribunal using Spanish constitutional law studies. In the author's opinion, the rather general and open European clause, although it required the jurisprudential activity of the Constitutional Tribunal, proved to be quite functional, becoming the basis of the relationship between Spanish law and EU law and remains unchanged to date.

**Keywords:** European clause, Article 93 CE, Spanish Constitution, European integration.

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## INTRODUCTION

The specific nature of the process of European integration, taking on the formula of a supranational organisation, forces each member state to adopt a specific legal construction which, based on the principle of state sovereignty, will allow it to join this organisation, to adopt its *aquis communautaire*, but also a framework allowing it *pro futuro* to bind itself to the law of this international organisation in accordance with the constitutional order. This is all the more important as the process of European integration is extremely progressive, and the extension of the organisation to new countries is accompanied by an extension also to new areas and a strengthening of cooperation in them, also based on the new competences with which the European Community/European Union is entrusted by the Member States. The Spanish Constitution is one of the constitutions of the Member States of the European Union in which the relationship between a state and an international organisation is defined by means of a 'European clause'. However, while the concept of the European clause is standard in the Member States, it must be borne in mind that the process of integration of a Member State into European structures may take different shapes and may be accompanied by different implications arising not only from the content of the European clause itself but also from other constitutional provisions establishing substantive limits to the integration process and establishing guarantees of the constitutionality of this process, which is particularly relevant given the fact, that EU law is

characterised by an effective system of guaranteeing its effectiveness, as the Court of Justice, through its jurisprudential activity, has pushed through the principles of primacy of application and direct effect of the norms of European Community law, which must have resulted in the need for a proper arrangement of the relationship of Community law and then EU law with the national laws of individual Member States, whose legal systems are based on the principle of supremacy of their constitutions.

This article will therefore attempt to answer the question of the legal nature of the European clause adopted in the Spanish Constitution and how it has affected the process of European integration and the Spanish constitutional order in that country. This will be done by analysing the provisions of the Spanish Constitution and the jurisprudence of the Constitutional Tribunal using Spanish constitutional law studies.

## THE ADOPTION OF THE EUROPEAN CLAUSE

For Spain emerging from its political isolation after the rule of General Franco, it was clear that the direction of the country's development would be linked to the process of European integration. There was therefore no doubt that the new democratic constitution would be open to international law and that it would formally allow accession to the structures of the European Communities. In the case of Spain, therefore, it was not a question of adapting an already functioning constitution to these needs, but of enacting a completely new act that would meet the country's current needs, including those of international relations. Looking at the drafting of the Spanish Fundamental Law, it will be noted that already in the first draft of the Constitution, the prototype of the European clause appeared in Article 6, allowing for the delegation by treaty or organic law of the exercise of powers under the Constitution to institutions of international law, on a parity basis (*en régimen de paridad*). Although the drafting of the Constitution included a condition for integration on this parity criterion, this requirement was removed during the work in the Senate (Ruiz Robledo, 1998, pp. 93-95). As Camisón Yagüe (2017) mentions, during the drafting of the constitution, a group of socialist deputies put forward a proposal to include in Article 6 a number of principles, which, acting as a mandate for the public authorities, were to guide 'materially' international relations and thus also the state's integration into the European Communities. These were the principles of international cooperation, respect for territorial integrity, the right of peoples to self-determination and independence, the protection of ethnic, racial and cultural minorities, the peaceful settlement of international disputes, freedom of international movement and the recognition of supranational bodies as the framework for the creation of an international order based on peace and justice (p. 167-170). Eventually, the issue, in an 'unconditional' version, was included in Article 93 CE.

As enacted, the first sentence of Article 93 CE provides that "by means of an organic law, authorisation may be granted for concluding treaties attributing to an international organisation or institution the exercise of powers deriving from the Constitution.." The second sentence, on the other hand, is devoted to the enforcement of obligations arising from treaties so concluded. According to this provision, "it is incumbent on the Cortes Generales or the Government, as the case may be, to guarantee compliance with these treaties and the resolutions emanating from the international or supranational organisations entitled upon cession."<sup>1</sup> The above provision is thus equivalent to analogous provisions found in other EU Member States referred to as "European clauses" (Closa Montero, 2008, Cruz Villalón, 2006) and underpins the European integration process in Spain by providing the framework for its constitutionalisation. Even before Article 93 CE was first applied, it had already received quite extensive scholarly analysis (López Castillo, 1996; Pérez Tremps, 1994).

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<sup>1</sup> In Spanish: "Mediante ley orgánica se podrá autorizar la celebración de tratados por los que se atribuya a una organización o institución internacional el ejercicio de competencias derivadas de la Constitución. Corresponde a las Cortes Generales o al Gobierno, según los casos, la garantía del cumplimiento de estos tratados y de las resoluciones emanadas de los organismos internacionales o supranacionales titulares de la cession".

Referring to Article 93 CE, it is also necessary to take into account another element of the constitutional environment defining the framework of the European integration process, which can be described as a guarantee of the proper constitutionalisation of this process. As is the case with the European clause, the Constitution from the very beginning, provided for a mechanism of preventive control of international treaties to safeguard against ratification of those that would be incompatible with the CE (Aláez Corral, 2017, pp. 257-258). This procedure, provided for in Article 95(2) CE, is carried out by the Constitutional Tribunal (TC) and can only be requested by the Government or the Chambers; it is therefore ultimately up to these legislative and executive bodies to determine whether a treaty can be examined for compatibility before ratification. It is this procedure that was the basis for the Constitutional Tribunal's two extremely important opinions for the interpretation of Article 93 CE (DTC 1/1992, DTC 1/2004). As already mentioned, the procedure contained in Article 95 CE is therefore considered one of the most important, if not the most important guarantee of the Constitution in the context of EU law.

### SCOPE OF APPLICATION AND LEGAL NATURE OF ARTICLE 93 CE

For the interpretation of Article 93 CE, it is crucial to define its scope of application, i.e. to define which treaties vest an international organisation or institution with the exercise of competences derived from the Constitution. Treaties of this kind, in the study of Spanish constitutional law, are referred to as 'integration treaties' (*tratados de integración*). In other words, the answer to the scope of the European clause requires an answer to the question of what the attribution of the exercise of competences under the Constitution consists of.

Discussing the meaning of this provision, it should firstly be recorded, following A. Ruiz Robledo (1998), that following the Belgian Constitution, Article 93 of the Spanish Constitution uses the term 'assignment' 'atribución' of the exercise of competence which is a more precise expression than 'transfer' 'transferencia' - used in early ECJ jurisprudence, a term which was subsequently abandoned as it does not evoke the idea of delegation. Moreover, as this author rightly points out, Community competence is not necessarily an exact copy of national competence. Thus, it is worth noting both from the point of view of the idea of delegation, in the sense of the discretionary power of the Spanish State to dispose: by referring to the 'attribution of the exercise of competence', it indirectly indicates a reservation of State ownership, which suggests the ability of the State to revoke the exercise of certain competences, so that sovereignty would remain intact. This idea is reinforced by the next paragraph of Article 93, which refers to 'cession', from which it follows that it would be most appropriate to use the term 'cession-attribution' rather than about 'attribution' alone. What is fundamental to these considerations, however, is this author's correct observation that the specific competences of the European Community do not depend on the expressions used in the constitutions of its Member States, since this would logically imply an admission that the competences of the European institutions (and therefore the validity of the rules they create) depend not so much on what is laid down in the Treaties as on what is provided for in each of these constitutions, which is contrary to the whole configuration of the European legal system as an autonomous legal system, equally applicable in all Member States (pp. 96-97).

Addressing this issue, Pérez Tremps (2018) rightly observes that although the answer to this question of the attribution of competences derived from the Constitution seems clear, as it implies the ceding of state power to a supranational organisation, or, according to the terminology used in other countries, the ceding of sovereignty, an answer of this kind implies two further questions. Firstly, what is to be understood by 'attribution of the exercise of powers' and secondly, what is to be understood by 'deriving from the Constitution' (p. 304).

As regarding the answer to the first question, the starting point is the thesis that the wording of Article 93 CE did not indicate *expressis verbis* any material limitations to the scope of the competences whose exercise could be attributed. It is worth emphasising, however, that the provision implied (and still does not, as the provision has not been amended) the possibility to attribute the exercise of certain competences, and not to abandon them in favour of another entity. This is the understanding of the provision in the Constitutional Tribunal's opinion DTC 1/1992, already cited above. Indeed, the Tribunal pointed out that such a cession does not imply an absolute abandonment

of the competence, since the exercise of the competence is ceded, but not its "ownership", which still belongs to the State. The natural implication of this position of the TC is therefore the thesis that such a cession can therefore be revoked and the exercise of these competences can revert to Spain, even if in reality this may seem quite difficult (however, the Brexit casus shows that this is possible). Of course, just as the process of accession and hence the attribution of the exercise of competences required specific procedures, so too would a potential withdrawal of the cession have to take place in accordance with Spain's international obligations. Against the backdrop of the TC's statement, it should be reiterated in this respect that the attribution/cession of the exercise of competences itself is in fact understood as the attribution of the exercise of part of the state authority to an international organisation.

However, with reference to the TC DTC 1/1992 declaration in question, it must also be noted that the first TC ruling on European law (STC 28/1991) already recognised that 'the Kingdom of Spain is bound by the law of the European Communities, both primary and derived, which, to use the words of the Court of Justice, constitutes its own legal system, integrated into the legal system of the Member States and binding on their jurisdictional authorities'. Thus, the Constitutional Tribunal recognised the binding legal nature of European Community acts on Spain, but both in the STC 28/1991 ruling and in the DTC 1/1992 declaration, it described Article 93 CE as having only an organ-procedural character, meaning that this provision is limited only to regulating the manner in which certain types of international treaties are concluded, with the result that European law will not have constitutional rank, but only an extra-constitutional ('infraconstitucional') (Prada Fernández de Sanmamed, 1996, pp. 96-97; Ruiz Robledo, 1998, pp. 100-101),

While in DTC Declaration 1/1992 the TC considered Article 93 to be organic-procedural in nature, in DTC Declaration 1/2004 it referred to substantive limitations on the attribution of the exercise of competences. This Declaration has become a subject of intense interest to Spanish legal academia becoming a milestone in the perception of the relationship between EU law and Spanish law (inter alia López Castillo et al., 2005; Portilla, 2005; Rodríguez, 2005; García, 2005). In this declaration, the TC referred to four specific questions regarding the ratification of the Constitution for Europe. Admittedly, it was not mandatory for the TC to give an opinion on this issue beforehand, but the opinion of the Council of State and pressure from the opposition parties forced the government to demand it. One of the questions, crucial to the subject of this study, was whether Article 93 was a sufficient basis for the ratification of this treaty, to which the TC answered in the affirmative (Closa Montero, 2008, p. 214). The TC pointed out that, first and foremost, such a limitation for integration treaties is the text of the Constitution itself, whose supremacy means that European treaties cannot modify the content of the Constitution itself. The competence to amend the Constitution cannot therefore be ceded on the basis of the clause in Article 93 CE. The Constitutional Tribunal has made it clear that under Article 93 CE, the Cortes General may cede or assign to themselves the exercise of 'powers derived from the Constitution', but not dispose of the Constitution itself by contradicting or allowing its provisions to be contradicted, since neither the power of constitutional revision is a 'power' the exercise of which is susceptible to cession, nor does the Constitution itself allow for reform through a channel other than the procedure provided for in Title X, that is, through the procedures and guarantees laid down therein and by expressly modifying its text. In this way, the TC had spoken even earlier in the STC 252/1988 judgment (Aragón, 1994; Llorente, 1992; Camisón Yagüe, 2017, p. 168; Pérez Tremps, 2004, p. 106). By the same logic, it must be stressed that Article 93 CE does not allow for the complete abandonment of the State's competences, since it refers to the attribution of the exercise of specific competences and not of all competences, which constitutes a kind of institutional guarantee of the State's existence that prevents its disappearance precisely through the mechanism of Article 93 CE. Indeed, this would require a constitutional act dedicated to this purpose, exercised within the framework of the constitutional reform power of Title X of the Constitution, and not the exercise of the delegation power of Article 93 (Pérez Tremps, 2004, p. 108; López-Sáez, 2019, p. 334). Thus, as mentioned above, Article 93 CE, in addition to establishing the procedural requirement of an organic law, is also the starting point for the material limits of the integration process. As an aside, it may be noted that the application of the organic law formula to the European clause has sometimes been criticised as being too simple (Ruiz Robledo

1998, pp. 95-96). However, it is also worth noting in this context the scholarly statements present (de Cabo Martín, 2015, p. 650) on the deconstitutionalizing potential of Article 93 CE and the threat of material subordination to an “imperial structure of domination” (*estructura imperial de dominación*).

It follows, therefore, from the CT declaration DTC 1/2004 that the significance of Article 93 CE lies in the fact that it underpins the substantive constitutional value of supranational integration (Portilla, 2005, p. 358; Areilza Carvajal, 2005, p. 370). The Tribunal noted that the operation of the attribution of the exercise of competences to the European Union and the consequent integration of EU law into Spanish law imposes unavoidable limitations on the sovereign powers of the State, which are, however, only permissible to the extent that European law is compatible with the fundamental principles of social and democratic rule of law established in the national Constitution (Pérez Tremps, 2004, p. 108; Camisón Yagüe, 2017, p. 169). For this reason, the constitutional cession allowed by Article 93 CE in turn has material limitations that are imposed on the cession itself. These substantive limitations, which are not explicitly stated in Article 93 CE but which are implicit in the Constitution, translate into respect for the sovereignty of the state, the basic constitutional structures and the system of fundamental values and principles enshrined in the Constitution, in which fundamental rights acquire their own content (Article 10(1) CE) (See also STC 26/2014. Confer Judges Asua Batarrita and Roca Trías, concurring votes to this judgment). A prerequisite for the principle of the primacy of Union law is therefore respect for national constitutional structures, among which fundamental rights (Ferrerres Comella, 2005, pp. 95-99). However, should the Union (in particular the Court of Justice as supreme interpreter of the Treaties) fail to adequately protect the constitutional structure, the Constitutional Tribunal would avail itself of the jurisdictional reserve just expressed in DTC 1/2004 but also in other judgments like STC 31/2009, STC 42/2014 (Portilla, 2016, pp. 510-511). However, it is worth noting some consequences of such a position, as aptly pointed out by Aláez Corral (2017). For it would imply a *de facto* suspension of non-fundamental constitutional norms in matters within the Union's competence, which does not seem very compatible with either the prohibition of the conclusion of treaties contrary to the Constitution (Article 95 CE) or with a less qualified majority than that required for constitutional reform in order to conclude them (Article 93 in relation to Articles 167 and 168 CE). Furthermore, it would no longer be the absolute primacy of Union law, insofar as the Constitutional Tribunal of a Member State, such as Spain's, reserves the power to control the respect of the said fundamental structures and principles by European Union law, in order to guarantee *ex ante*, but also *ex post*, constitutional supremacy (pp. 259-260).

With regard to material pressures on the integration process, this phenomenon was already defined by the Constitutional Tribunal in DTC Declaration 1/1992 as “modulation.” The Court noted that EU law, although it cannot modify the Constitution, serves to modulate “the scope of application and not the wording of the (constitutional) principles that [...] established and arranged” competencies. This concept, along with that of constitutional mutation (*mutación constitucional*), has been accepted in Spanish constitutional law doctrine, where the presence of this process is demonstrated in many areas (Bustos Gisbert, 2005; López Castillo, 2001; Pérez Tremps, 2004; Ruiz Robledo 1998). Addressing the issue in light of DTC 1/2004, Aláez Corral (2017) concludes that the substantive treatment of Article 93 CE makes it possible to guide the process of European integration, allowing for a kind of mutation of the Constitution through interpretation. Regardless, however, the TC should have safeguarded the supremacy of the CE by requiring that any insurmountable contradiction with European Union law, regardless of whether it affects the basic principles, values or structures of the constitution, require the prior constitutional reform enforced by the mechanism of Article 95 CE, since the supremacy of the CE does not allow for implicit constitutional reform. Respecting the supremacy of the Constitution also means respecting the sovereignty of the Spanish people (Article 1(2) CE), which is a condition for the legitimacy of the legal system and thus its effectiveness (p. 259).

As a consequence of this answer to the question of the nature of the delegation of the exercise of powers, it is therefore necessary to determine what part of state authority can be attributed? Article 93 CE indicates that it is about the exercise of powers derived from the Constitution. In the context of the fact of Spain's peculiar territorial

system, it is relevant that it can be about the delegation of the exercise of powers that, according to the constitutional bloc, belong to the state, as well as to the autonomous communities (Ruiz Robledo, 1998, p. 94). However, in accordance with what has already been signaled above, it cannot be about competences in matters that, according to the Constitution, belong to constitutional public authorities, and for the cession of which an amendment to the Constitution would be required (Punset Blanco, 2011, pp. 148-150; Aláez Corral, 2017, p. 258).

Regarding the scope of Article 93 CE, it is important to note the relationship of this provision with Art. 94 CE, which deals with the situation of the State's consent to accept obligations arising from international treaties or agreements in the cases specified therein, such as treaties of a political nature; treaties or agreements of a military nature; treaties or agreements affecting the territorial integrity of the State or the fundamental rights and duties established under Title I; treaties or agreements which imply financial liabilities for the Public Treasury; treaties or agreements which involve amendment or repeal of some law or require legislative measures for their execution. In these cases, Spain's binding itself to such an act requires prior authorization from the Cortes Generales.

### **APPLICATION OF ARTICLE 93 CE IN CONSTITUTIONAL PRACTICE**

Regarding the scope of Article 93 CE, it is important to note the relationship of this provision with Art. 94 CE, which deals with the situation of the State's consent to accept obligations arising from international treaties or agreements in the cases specified therein, such as treaties of a political nature; treaties or agreements of a military nature; treaties or agreements affecting the territorial integrity of the State or the fundamental rights and duties established under Title I; treaties or agreements which imply financial liabilities for the Public Treasury; treaties or agreements which involve amendment or repeal of some law or require legislative measures for their execution. In these cases, Spain's binding itself to such an act requires prior authorization from the Cortes Generales.

The constitutional regulation in this regard is therefore not very clear, as confirmed by past practice. The aforementioned Article 93 CE became the basis for Spain's accession to the European Union in 1986. The relevant organic law was therefore passed (*Ley Orgánica 10/1985, de 2 de agosto, de Autorización para la Adhesión de España a las Comunidades Europeas*, BOE, núm. 189, de 8 de agosto de 1985), resulting in Spain being bound by the Accession Treaty (*Tratado relativo a la adhesión del Reino de España y la República Portuguesa a la Comunidad Económica Europea y a la Comunidad Europea de la Energía Atómica*). The effect of the above was that Spain accepted the entire *aquis communautaire*, which had this fundamental effect on the entire legal system, both formally and materially (Camisón Yagüe, 2017, p. 170). The procedure provided for in Article 93 CE and the enactment of the relevant organic laws also took place in cases of further attribution of the exercise of powers provided for by subsequent European treaties (LO 4/1986, LO 10/1992, LO 9/1998, LO 3/2001, LO 1/2005, LO 1/2008). In addition, Article 93 CE has also been applied as a legal basis for amendments to the EU treaties, in cases of accession of new member states (LO 20/1994, LO 12/2003, LO 6/2005, LO 6/2012). The procedure provided by Article 93 CE was also used to approve the Statute of the International Criminal Court (LO 6/2000).

The above practice is thus a rationale for concluding that the key criterion for distinguishing situations in which Article 93 CE and Article 94 CE are applicable is therefore the cession of the exercise of constitutional competences, which determines in each case the application of Article 93 CE, or a change in the manner in which they are exercised, which is the case with the accession treaties, which modified both the procedures for decision-making within the EU, but more importantly also changed the substrate of the supranational organization to which the exercise of certain competences had previously been delegated (. However, in the case of NATO accession, when doubts arose in this field, the Council of State, in exercising the powers provided for in Article 22.1 of LO 3/1980, determined that Spain was not delegating the exercise of competencies derived from the Constitution, and the procedure provided for in Article 94 CE was applied. Thus, the above practice makes it possible to confirm the thesis that a functional interpretation is applied in this regard, which dedicates the application of Article 93 to treaties

in the field of European integration, the *signum specificum* of which is precisely the delegation of the exercise of powers and not the scope of the matters to which they relate.

As already mentioned, after Article 93 CE was used for accession, the provision was used in the ratification of subsequent integration treaties. Particularly relevant to the characterization of the Spanish European clause was the ratification of the Maastricht Treaty. The Constitutional Court, acting precisely in this procedure, expressed its opinion regarding the compatibility of the Maastricht Treaty in the already cited Declaration DTC 1/1992, which is relevant to the problems of this study, since in it the Constitutional Court identified the legal nature of the Spanish European clause. However, Declaration DTC 1/1992 must also be noted because of the need for a constitutional amendment regarding the passive electoral right, as the TC pointed out that it follows from the treaty in question that part of the right of EU citizens is the right to stand for election in local elections for citizens of the Union in all member states (Pérez Tremps, 2018, p. 33). Thus, one of the direct consequences of the Maastricht Treaty was the first of the formal amendments to the Constitution, resulting, therefore, from the need to correct Article 13(2) CE, which refers to the passive electoral right of foreigners. Significantly for this study, however, the need for this amendment was brought to the attention of the Spanish Constitutional Court acting pursuant to the aforementioned Article 95(2) CE. According to this provision, the conclusion of any international treaty containing stipulations contrary to the Constitution shall require prior Constitutional amendment. The Government, or either of the Houses may request the Constitutional Court to declare whether or not there is a contradiction. It should be noted that the rather limited use of Article 95(2) CE with respect to the Maastricht Treaty, as well as the very limited constitutional debate in this regard, have been severely criticized in Spanish legal scholarship (Prada Fernández de Sanmamed, 1996, pp. 101-105; Ruiz Robledo, 1998, pp. 99-100, García, 2005, p. 345, see also literature cited there).

Also relevant to the legal nature of Article 93 CE was the question of publication of organic laws and treaties. While primary law was published in the BOE at the time of ratification, secondary law adopted prior to Spain's accession to the Communities was not published in the BOE, as this would be in violation of Community law, one of the principles of validity of which is exclusive publication in the Official Journal of the European Communities. For the same reason, no provision of secondary law enacted after January 1, 1986 was also published in the BOE, but the issue was under consideration because the validity of secondary law by virtue of its exclusive publication in the Official Journal of the European Communities was not addressed in the Spanish Constitution. This issue was relevant to the requirements indicated in Article 96 CE. After some doubt as to whether the organic law allowing ratification should address the issue, any legislative decision in this regard was ruled out. Significantly from the point of view of the topic of this study, the validity of the secondary law was justified by arguing that Article 93 of the Constitution is *lex specialis* to Article 96, and as such leaves the *lex generalis* inapplicable, since one of the powers delegated to the community institutions is the publication of their regulations (Ruiz Robledo, 1998, pp. 97-98).

## **THE RELEVANCE OF THE EUROPEAN CLAUSE TO SPAIN'S FULFILMENT OF ITS OBLIGATIONS ARISING FROM THE INTEGRATION PROCESS**

An important element of the content of the Spanish European clause is the question of the fulfilment of obligations arising from the attribution of the exercise of competences. According to Article 93 CE in fine "it is incumbent on the Cortes Generales or the Government, as the case may be, to guarantee compliance with these treaties and the resolutions emanating from the international or supranational organisations entitled upon cession." It follows, therefore, from this provision that it is the responsibility of the Parliament and the Government to ensure the implementation of the obligations flowing from European Union law. It should be noted, however, that it is not a question of always doing so, but only of ensuring that these obligations have been fulfilled, in other words, EU law will be applied directly, according to the principle of priority of application, by any body to which it is addressed, such as for example the Spanish court. The role of the Parliament and the Government, on the other hand, is to act

within their respective competences to create an appropriate institutional and legal environment in which the application of EU law is ensured.

The Constitutional Tribunal has also expressed its view on this issue, and the starting point of the case law is the STC 252/1988 judgment on the territorial organisation of the state, in which the Tribunal stated that the "external" element involved does not mean that such enforcement is considered "international relations" falling within the scope of Article 149(1)(3) CE and is therefore a competence of the central authority (See also STC 165/1994). In the Constitutional Tribunal's view, the enforcement of international treaties, and thus of primary and secondary Community law, is not so much a competence as a constitutional obligation and therefore does not depend on any statutory attribution. Consequently, it is the internal authority, the State or the autonomous community, which is competent in each case *ratione materiae*, that must proceed to enforce it (Ruiz Robledo, 1998, pp. 104-106). The general principle of cooperation between the State and the autonomous communities is furthermore relevant in this regard. Citing this ruling, Pérez Tremps (2018) writes that legal considerations (the intertwining of the competences of the State and the autonomous communities) and practical considerations (the complexity of the tasks to be carried out) mean that the implementation of European law cannot be seen as a perfectly defined and separable constitutional obligation, and therefore possible to fulfil autonomously. According to this author, this is therefore one of the areas where the general imperative of cooperation between the central authorities and the autonomous communities is most evident, although precisely because of its difficulty, it is very complex. The relationship between the State and the autonomous communities in European affairs must be based on the principle of cooperation by means of instruments that allow the autonomous communities both to participate in shaping the will of the State and in the sphere of coordination with the State's actions in order to properly implement the obligations arising from membership of the European Union (pp. 306-307).

The indication in Article 93 CE in fine of only the Cortes General and the Government is significant for another reason. Since it follows from the principle of institutional autonomy that the internal division of competences of each State is its internal affair, if the Spanish Constitution places responsibility for the implementation of EU law exclusively on the Cortes Generales and the Government, it is legitimate for these bodies to make use of instruments that allow the coordination of the implementation of EU law by all those entities that are authorised to do so *ratione materiae*, which is particularly relevant precisely in a State with a territorial organisation such as the Spanish one. However, insofar as the assumption on the State of obligations arising from EU membership does not bring about a revolution in the distribution of competences within the State's territorial organisation, it should also be a rule that the State should, at least in principle, make use of the standard instruments provided for by the CE, primarily of a judicial nature. Nor is there any reason to exclude from this scope Article 155 CE, according to which If an Autonomous Community does not fulfil the obligations imposed upon it by the Constitution or other laws, or acts in a way seriously prejudicing the general interests of Spain, the Government, after lodging a complaint with the President of the Autonomous Community and failing to receive satisfaction therefore, may, following approval granted by an absolute majority of the Senate, take the measures necessary in order to compel the latter forcibly to meet said obligations, or in order to protect the above-mentioned general interests. In addition, as Pérez Tremps (2018) writes, Article 149.1.3 CE, and in particular the obligation to guarantee compliance with obligations arising in relation to the outside world, may justify the establishment of additional formulas, not so much for control, but for coordination between central and regional authorities, These could be information obligations and monitoring instruments (pp. 308).

A final issue with regard to the fulfilment of the obligations arising from the delegation of competences, relevant from the point of view of the territorial organisation of the State, is the question of the liability of the Autonomous Communities for any damage caused by a failure to fulfil their obligations towards the European Union, where, of course, it follows from the constitutional nature of the matter in question that it is for the Autonomous Communities to fulfil certain obligations. This matter has been settled by the Constitutional Tribunal,



which, in its judgment STC 79/1992, recognised the possibility of "transferring ad intra, to the competent public administrations of the Autonomous Community, a responsibility that may apply in any case".

## CONCLUSIONS

The inclusion of the European clause in the 1978 Constitution was certainly of fundamental importance for Spain, becoming the basis for the process of European integration, first only in a formal sense and then also in a material sense. Despite the fact that a rather general formula was adopted, devoid of literally expressed criteria with regard to the parameters of the integration process, it proved to be so functional that it served both for Spain's accession to the European Communities and proved to be sufficient in the subsequent stages of integration, both in the process of their transformation into the European Union, opening the way to a common monetary policy, and a common currency, and then in the powers delegated by the Amsterdam Treaty and the Lisbon Treaty. It also proved to be a sufficient formula for the ratification of the Treaty establishing a Constitution for Europe, even though it did not enter into force due to the positions of France and the Netherlands. The Constitutional Tribunal's declarations around Article 93 CE (DTC 1/1992 and DTC 1/2004) have helped to shape the doctrinal and practical relationship between EU law and Spanish law, particularly the Constitution. While Article 93 CE has been debated in the context of potential amendments, its functionality has been an important argument for why the Spanish European clause has not been amended to date.

However, it must not be forgotten that the *ratio legis* of this provision was Spain's accession to the European Communities, which at the time was dominated by integration in the economic sphere, and the issue of cooperation in other fields, including fundamental rights, was only just beginning. The question therefore arises as to whether the process of integration at the political level does not require a revision of the European clause, with explicitly enshrined substantive criteria giving unambiguous constitutional legitimacy to Spain's participation in a changing Europe, while at the same time expressing the definite position of the Member State on the direction of these changes.

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