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GOvernments
Network

Thomas Prorok
Thomas Weninger (ed.)

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Impact of the European Union on Local Authorities

Guidelines for South East European Local Government Associations

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Österreichischer Städtebund
AACT – Association of Austrian Cities and Towns

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Impact of the European Union on Local Authorities

Authors:

Paulis Barons	Latvian Association of Local and Regional Governments, Riga
Ines Breiner	Municipal Department 27 – EU-Strategy and Economic Development, Vienna
Sandra Ceciarini	Council of European Municipalities and Regions, Head of citizenship and international cooperation, Paris
Ilze Ciganska	Latvian Association of Local and Regional Governments, Riga
Bernadette Malz	KDZ – Centre for Public Administration Research, Vienna
Karin Mathé	Municipal Department 27 – EU-Strategy and Economic Development, Vienna
Philip Parzer	KDZ – Centre for Public Administration Research, Vienna
Thomas Prorok	KDZ – Centre for Public Administration Research, Vienna
Johannes Schmid	Association of Austrian Cities and Towns, Vienna
Ginka Tchavdarova	National Association of the Municipalities in the Republic of Bulgaria, Sofia
Boris Tonhauser	Council of European Municipalities and Regions, Brussels
Oldřich Vlasák	Union of Cities, Towns and Communities of the Czech Republic, Prague
Thomas Weninger	Association of Austrian Cities and Towns, Vienna
Simona Wolesa	Association of Austrian Cities and Towns, Brussels
Kelmend Zajazi	Network of Associations of Local Authorities in South-East Europe, Skopje

Published by
Thomas Weninger
Association of Austrian Cities and Towns, A-1082 Vienna
Thomas Prorok
KDZ – Centre for Public Administration Research, A-1110 Vienna

Coordinated by
Bernadette Malz
KDZ – Centre for Public Administration Research, A-1110 Vienna
e-mail: institut@kdz.or.at
Internet: www.kdz.or.at

Printed by
Littera Druck, A-1120 Vienna

Layout & Production
Karin Hruschka, www.grafic.at, A-5325 Plainfeld

Vienna, October 2008

ISBN 978-3-901683-24-0

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PREFACE – MR. MICHAEL HÄUPL

Vienna, the Austrian Association of Cities and Towns (AACT) and the Council of European Municipalities and Regions (CEMR) contribute to LOGON since its beginning in the late 1990s. Numerous conferences and reports have been organized under the umbrella of the LOcal GOvernments Network. And Vienna has always been a main supporter of these activities. We are glad that many representatives of local governments from EU and potential future EU countries follow our invitations to Vienna to participate in the LOGON conferences. It is also satisfactory to see how experts from Vienna – the City of Vienna, the Austrian Association of Cities and Towns and the KDZ Centre for Public Administration Research – collect their know how and make it available for a broader community in Eastern and South Eastern Europe in the LOGON Reports.

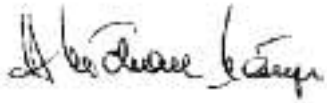
Meanwhile it has become tradition that each one to two years LOGON summarizes the new developments of the EU regulations and directives (the so called EU acquis communautaire) which concern the local level. Also this time the editors brought together experts and representatives of local governments and local governments associations of EU countries to present the current developments of local related EU policies and programmes. The core topics like the consequences of the service directive on the services of general interest are discussed as well as new developments in the environment and energy policy of the European Union.

This report takes an additional approach as many experts and representatives from new EU member countries present their experiences with the European Integration. Reading the article of Mr. Oldřich Vlasák, President of the Union of Cities, Towns and Communities of the Czech Republic, about the impact of EU entry on the Czech local authorities gives insights into the challenges of the local level during the EU accession process and membership. It can be seen as set of recommendations for all representatives of local governments which have to work with European Integration. A further set of recommendations – guidelines for local governments on the way to the European Union – is contributed by the Vienna experts. This reflects the new developments in LOGON: The LOGON knowledge more and more origins in the Central and Eastern European Countries which got EU members in 2004. The new regional attention lies in South East Europe. With NALAS (Network of Associations of Local Authorities of South Eastern Europe) an important and strong partner has been found in order to meet the upcoming challenges with these countries and to guarantee successful cooperation.

Vienna recognizes its responsibility as bridge between East and West and North and South, to be a strong facilitator of the know how transfer for South Eastern European municipalities and local government associations. As Mayor of Vienna and President of CEMR and AACT I will also ensure the know how transfer and cooperation between the local governments and local governments associations and actively support the LOGON activities in future.

I would like to express my thanks to the experts that have brought together their experience and wisdom in this publication. Furthermore many thanks go to the Austrian Development Agency for supporting this publication which is an extremely valuable contribution to make the EU enlargement a success.

Michael Häupl



Mayor of Vienna, President of CEMR and AACT
Vienna, October 2008

INTRODUCTION OF THE EDITORS

Thomas Weninger – Secretary General of the Association of Austrian Cities and Towns, Vienna
Thomas Prorok – KDZ – Centre for Public Administration Research, Vienna

1999 the LOGON work had its first highlight with the LOGON conference which was dedicated to the impact of the European integration process at local level. The conference was divided into four thematic workshops – environment, structural policy, financial and economic policy and other issues related to the local level like land transactions, free movement of persons, goods and services and rights connected with EU citizenship. With small adaptations these issues have dominated the LOGON work till today and the results of the conference have been valid at that time as well as today.

EU accession and membership have a considerable impact at national, regional and local levels. Notably local authorities are the level at which the impacts of accession are most directly felt. This applies to local and regional economic policy, to public procurement, public finances, new framework regulations for municipal utilities, the implementation of environmental standards, as well as the introduction of the four fundamental freedoms of the Internal Market (for example acquisition of real estate by citizens of the Union, the freedom of establishment and the right to participate in municipal elections). These fundamental impacts of EU policies at regional and local levels call for a timely preparatory process on behalf of local authorities and regions.

The LOGON reports prepared by the associations of local and regional authorities in the countries which joined the EU in 1995 share the opinion that providing local authorities and regions with the relevant information at an early stage, as well as their active participation in and contribution to the national decision-making process in all issues of relevance to this government level, are an essential precondition for a successful accession.

Furthermore it is important that local government representatives are included in the relevant process at national level and in European issues. This is the only way to ensure that they transmit the new “European” way of thinking to the citizens and raise the citizens' interest in the European integration process.

In view of the manifold impacts of EU accession at local levels and in recognition of the importance of the European unification process it has to be ensured that

- the national governments of the accession countries provide a direct involvement of their local authorities in the integration process,
- the European Union ensures to deal appropriately with the concerns of local authorities in the accession countries and
- the local governments take over an active part in the preparation of the EU accession negotiations.

Till today and also for the future these requirements are basic foundations of the policy of local governments and their associations. Between 1999 and 2008 numerous publications –

especially LOGON Reports – followed these considerations. The core of these publications has always been the impact of the EU acquis communautaire to the local level.

For the LOGON Report 2008 we asked local government experts and representatives from European Union countries to give an overview of the consequences of EU-membership and accession to the local governments and local governments associations in specific policy fields. The objective is to give support to the EU-accession process for the local level in South-Eastern Europe at an early stage. So we have gathered the following contributions:

Mr. Oldřich Vlasák, President of the Union of Cities, Towns and Communities of the Czech Republic, Executive President of CEMR and Member of the European Parliament gives a personal overview on the impact of EU entry on the Czech local authorities. This contribution covers a broad range of experiences which the Czech municipalities had to face in the last years. A series of DO´s and DON'T´s is brought together in this article of Mr. Vlasák and should be taken seriously from all local government representatives which start negotiations or cooperation with the European Union. Comments and recommendations are delivered from the advantages and disadvantages of EU-Funds to the "scarecrow" of municipalities and regions in the Czech Republic like services of general interest, general economic interest, public procurement and state aid.

Mr. Thomas Prorok from KDZ Centre for Public Administration Research summarizes the experiences of Austria and other Central and Eastern European Countries with the EU accession and membership with specific examples in local finances, environment and services of general interest. Based on the LOGON experiences he elaborates guidelines for local government associations on the way to the European Union consisting of the seven topics: development of a EU strategy; staff and organisational requirements; screening of the national law relevant for the local level; policy papers from the local governments associations; implementation of a European integration working group; information and communication; networking.

Mrs. Simona Wolesa from the Brussels office of the Austrian Association of Cities and Towns recapitulates the local aspects of the Lisbon Treaty. Even if the treaty has not come into force till now it can be seen as a major progress for the system of local self-government in the European Union. It contains many articles which are of essential interest for the local level and which have been demanded to be fulfilled for years, e.g. the acknowledgement of local/regional government, the strengthening of the European subsidiarity and the emphasis in Protocol nr. 23 on the competences of local/regional governments in providing public services.

Mrs. Sandra Ceciarini from the Council of European Municipalities and Regions summarizes the CEMR activities of city cooperation and twinning. Twinning is supported directly by the CEMR secretariat and the Working Group on Twinning.

Mrs. Ginka Tchavdarova, Secretary General of the National Association of the Municipalities in the Republic of Bulgaria, covers the main aspect of local governments: the budgetary questions. She stresses the budget negotiations with the central government which is in the first view not related to the European Union membership. But fiscal decentralisation can be

seen as prerequisite of a EU membership. Further more the budgetary consequences of the EU membership need well established budget negotiation procedures between central and local governments. This is the only way to guarantee quick and sustainable agreements between local and central governments which can be used to compensate fiscal threats of EU-decisions. Some of the recommendations are: enter into a dialogue, rather than fights with the central executive and legislative authorities; be part of the process of preparing quality analysis, forecasts, consultative papers; build own financial data base and have access to the national data base of the Ministry of Finance; seek and find own lobby within each ministry, governmental agency and the Parliament; research and apply the best international practices, etc.

Mrs. Ines Breiner and Mrs. Karin Mathé from the Department EU-Strategy and Economic Development of the City of Vienna, summarize the status of the services of general interest in the services directive. The development of the service directive accompanied the LOGON work in the last years. Own publications and conferences have been dedicated to this topic. Now the service directive has been adopted and has to be implemented into national law till the end of 2009. It is still not clear what the consequences of the directive will be in five years and how it will influence the judicature of the European Court of Justice. Nevertheless the authors stress that public authorities have to take the necessary legal measures in order to guarantee that services of general economic interest can be provided on local and regional level in the future and that municipalities have to communicate their own concerns through lobbying activities in Brussels to influence the decision making process as early as possible.

Johannes Schmid, legal expert of the Austrian Association of Cities and Towns introduces the Austrian system of public procurement. He chooses the approach of not listing the decisions of the European Court of Jusitice which domains the European discussions about public procurement. The article shows how a federal built state like Austria guarantees that the public procurement provisions of the European Union are executed.

Ilze Ciganska from the Latvian Association of Local and Regional Governments overviews the European regional and cohesion policy from the local viewpoint of a new EU member state. She comes to the results that the availability of the funding positively stimulated the main macroeconomic indicators but at the same time the flow of the funding into the national economy indirectly stimulated the increase of the inflation and the territorial disparities are still high in Latvia.

Boris Tonhauser from the Council of European Municipalities and Regions (CEMR) presents the broad variety of urban planning and development in the EU policies. His focal point is the relevance for the local level so that all EU policies and programmes (from the cohesion policy to the European Spatial Planning Observatory Network – ESPON) are presented under this specific view. It allows the reader to learn e.g. about calls of proposals of ESPON for projects about the climate change and territorial effects on regions and local economies, agglomeration economies in Europe, cross-border polycentric metropolitan regions, success for convergence regions' economies, transnational support method for European cooperation and territorial diversity etc.

Paulis Barons, adviser on energy issues of the Latvian Association of Local and Regional Governments, concentrates on the framework conditions for local governments in the energy sector. Based on the Green Paper "A European Strategy for Sustainable, Competitive and Secure Energy" local governments have to be aware of reaching the defined targets for 2020: reduce energy consumption by 20 percent; use 20 percent of renewable sources in energy generation; shorten CO_2 emissions by 20 percent (meanwhile 30 percent). As recommendations can be seen e.g. for example to make professional energy audits for specific objects (house, village, town and region) and based on that to develop long term policy and short term action plans.

Ilze Ciganska and Thomas Prorok reviewed the chapter "Implementing the EU acquis at local and regional level – EU directives and regulations" of the LOGON Final Guide 2005 which was edited by Mr. Guido Dernbauer and Mr. Martin Loga. The authors actualised the part "environment" and updated it to the current legal situation based on the new EU directives and regulations.

Bernadette Malz and Philip Parzer, KDZ Centre for Public Administration Research, reviewed the chapter "Implementing the EU acquis at local and regional level – EU directives and regulations" of the LOGON Final Guide 2005 which was edited by Mr. Guido Dernbauer and Mr. Martin Loga. The authors updated the parts anti-discrimination and free movement of people, acquisition of land by foreigners, social policy, local and regional finances, local elections, consumer protection and updated it to the current legal situation based on the new EU directives and regulations.

The highlight of the LOGON activities 2008 was the conference "South-East Europe – Meeting the challenges" which was attended by over 100 representatives of local governments and associations from over 20 countries on 6–7 November 2008 in Vienna. The conference was organised by the Council of European Municipalities and Regions (CEMR) with the support of the Austrian Association of Cities and Towns and NALAS (Network of Associations of Local Authorities of South-East Europe). It addressed a range of priority issues for local government in South-East Europe, such as municipal finances, urban planning, energy and the environment, twinning and preparations for EU accession. Kelmend Zajazi, Executive Director of NALAS, summarizes the results and considerations of the conference. Further more the final declaration is attached which was unanimously adopted. It stresses the participants' commitment to "building stronger links with and between local and regional governments in the countries of South-East Europe, enabling the exchange of experience and good practice" since these "constitute the necessary and vital path to overcoming past differences". It also shows that the process of EU integration and reunification must proceed. It calls on the EU institutions and national governments to pay more attention to the key role of local and regional authorities in this process. This final declaration completes and finishes the LOGON Report 2008.

This LOGON Report 2008 is designed as guideline for the local government associations to be fit for the EU-accession process and avoiding pitfalls. The contributions cover the main aspects of the EU-law concerning the local level or present experiences and recommendations of prior EU-membership negotiations. All in all the broad variety of EU enlargement concerning the local level is pictured in this report. We hope that it is a useful handbook which shows the right way to the European Union.

Chapter 1 IMPACT OF EU ENTRY ON THE CZECH LOCAL AUTHORITIES

IMPACT OF EU ENTRY ON THE CZECH LOCAL AUTHORITIES

Oldřich Vlasák – President of the Union of Cities, Towns and Communities of the Czech Republic, Prague

1.1 WHAT THE BENEFITS OF THE LOGON PROJECT WERE FOR US

I remember it was LOGON 2002 Report in which the sever fact of impact of EU entry stroke our eyes: they are the local authorities that must implement about 60 percent of all obligatory provisions of European law[1]! The Czech Government did not prepare our cities, towns and communities for that before the Czech Republic acceded to the EU. Until then, local governments had only put up with transformation of public administration and suddenly they were forced to respond to regulations and directives accrued from complex compromises of all EU countries. So much needful experience with lobbying on the EU level was missing and mu-nicipalities' space-finding in European issues was in the least insufficient.

Effect of compromise negotiations of the EU states on local authorities is often heavy – communities must account for decisions that made politicians and institutions far away from everyday lives of cities, towns and villages. They do not know what struggle for every penny is and they do not have to, as local councillors, face their citizens. Unfortunately, mayors, councillors and local representatives have another "enemy" – their own state administration, when they have to implement European law in an even stricter form than necessary. State authorities and ministries often introduce Union directives into national legislation with much harder conditions that they are in the Brussels versions, and their often pointless decisions defend with responsibility of the EU.

We can say today that the Czech cities, towns, chartered villages and communities have coped with their position in the EU and they know their chances. They are aware of how to react to new directives and regulations that are prepared, how to communicate with departments, who to refer to, whose experience make use of or who to rely on. Nevertheless, it also depends on professional background of a local authority that is dependant on its size. A different situation is in million-strong Prague or other twenty cities with more than 50 thousand inhabitants than is in thousands of small villages with a few tens or hundreds of inhabitants. However, the path to finding their position in a complex space of united Europe was not easy. That is why Czech municipalities and their association of local authorities, the Union of Cities, Towns and Communities welcomed the LOGON Project managed by the Austrian Association of Cities and Towns. In regularly issued reports it granted them basic view of what they could expect in the European Union, how to come up to acquis communnautaire and what to prepare for. It thus compensated for information that in my opinion should have been provided by the state and its institutions.

[1)] LOGON Report 2002, Lobbying in Europe. Association of Austrian Cities and Towns, Vienna, 2002, p. 187.

1.2 NEW EXPERIENCE EXAMPLES

What Czech local authorities have learnt on their short journey from the moment the Czech Republic started preparing for the EU accession would have given for a book on its own. This LOGON Report summarises areas in which the EU is the most influential, thus being a useful source of information for local governments. Besides the most prominent issues, such as the environment or transport, there are also safety and justice (for example many municipalities must meet the Schengen Agreement), problems with migration and minorities, with quality of public administration and its improvement or international cooperation of cities, towns and communities. There would be a lot of topics; however, there is not enough scope for them here.

That is why I selected the most striking issues that to an important extent widened municipal agenda. As a new topic for newly entering countries they are, without question, the European Funds and preparation of projects for grants under the EU Structural Policy. Another area covers public services in sense of EU law regulating services of general interest and general economic interest. I glance over awarding public contracts and state aid and on a specific example of social services I show how free market and the EU competition rules affluence municipalities.

1.2.1 European Funds gave a chance to implement ideas for which there were not enough funds

I am sure my colleagues from public administration would approve that the European Funds and huge opportunities that they brought along were the reason for the Czech Republic to learn new things and adapt to the EU. Together with the accession getting closer, the words project, funding programmes or European Funds started to be inflected more and more. But not many people knew what to imagine by them. At the first moment it looked like there was some money somewhere that someone gave for anything.

However, the very first experience with submitting projects for approval demonstrated that this was not the case. The one who holds out the money has a special target which must be met by the project. Councillors had to learn to decide what they wanted to do; they had to lay down preferences. And on the other side they had to identify to detail what was expected by those who released the funds, what was actually “wanted”. The EU Funds are here in order to bring some kind of public goods, especially long-term economic development based on sustainable growth and social priorities of the EU. Step by step people interested in implementing projects learnt things that did not indeed provide for direct approval of the projects, but meaningfully contributed to their better assessment and ranking on the list of the approved ones. I bring together some of the hints below.

1) Lucky those who are prepared!

As with everything, detailed preparation in advance pays off. For that it is possible to use foreign colleagues, concentrate on the programme for the support of partnership Europe for

Citizens (the so-called Twinning Programme), make appointments in partner towns that already have some experience with the European Funds, invite professionals from abroad or other similar towns and learn. Partner towns usually resolve similar issues as you do, they have about the same population structure or they do their best to support entrepreneurship or build a waste water treatment plant in the same way as you do. They may have already implemented a successful project that could, in a modified form, be advantageous for your municipality, too. It is worth being open and look around you.

Nevertheless, if you already have a tip for a project, do not hurry up. Not always are the programmes called at once and not always may you submit your idea as a project under a certain programme. Provided that the municipality knows what it wants to do for its citizens, it is worth gathering ideas, preparing project designs and, when there is the right moment and the call suitable for your project is open, draw them out and use them. It is definitely advisable to prepare your ideas in a form of a strategic plan, to think in context and with a view to sustainable funding of the project outcomes.

In no case did to Czech municipalities and cities prove right creating “artificial” projects based on a vision of some money and a call for proposals. They do not usually have a leg to stand on; they miss a necessary ideologue that would bring the project to a successful end and insufficient motivation of those who work on the project adumbrates its failure. In case such a project is yet approved for financing, it is threatened by bad project administration, vague results and finally, due to mistakes, the worst may happen: in the course of project monitoring and assessment either state administration officials or, in worse case, the officials of the European Court of Auditors may find such discrepancies between the approved project idea and implementation of the project that it would be necessary not only to return the money, but pay also money penalty.

People sometimes expect unrealistic outcomes from the European Funds. There are rumours that they can pay everything, that they are easily accessible or that there is no work with them. But contrary is the case. Czech cities, towns and villages have already found out that administration of the European Funds is much more complicated and difficult for fulfilling European or national requirements on cogency of use of the money that it is sometimes easier to apply for national grants. At the beginning, shortly before the EU accession after it, the state opened a number of national programmes. Nevertheless, they have been significantly reduced. The reason is that European money must be accompanied by own, “national” sources. That is why national grant programmes have often been put to an end so that the funds, earmarked for them, could be used for co-financing of the European Funds. That is why in order to draw down the Structural Funds it is important to concentrate on one quality project with a chance of succeeding in competition than to shoot all around with many ideas with poor final results.

2) Do not fish in a fished out pond

While missing funds for necessary investments into municipal infrastructure, mayors looked up to the European Funds with great expectations. Here it was necessary to refit a pavement,

there to change former barracks into a suitable housing area or industrial park. What a disillusion it was when they found out that due to so many similarly afflicted municipalities applications for grants from the European Regional Development Fund financing especially "hard" infrastructure projects went far beyond means of this fund. In their frustration municipal representatives came to a conclusion that the funds not be captured, or that investing into project preparation was not worth the effort.

As it has already been stated, lucky were those who got prepared. But even if you do not manage to gain a grant directly on the objective you outlined for yourself from the European Regional Development Fund, do not despair. A lot of municipalities learnt that it was worth not giving up their vision of better environment in cities, towns and villages and decided to exploit opportunities offered by the European Social Fund. The so-called "soft" projects are funded by this Fund, i. e. those whose basic prerequisite is not investment into infrastructure, but into people, entrepreneurship, employment, social affairs etc. In the application for money from this Fund it is possible to include, among others and to a certain extent, also building of infrastructure. Municipal councillors thus learnt not only to think about broken roads, but also where they go from and where they lead, if people really use them or whether they are necessary for the citizens to get to work.

Those who use other European funding programmes are also sensible. For example, the Community funding programmes finance transfer and share of know-how, information and experience, support development of innovation, research and development, concentrate on education or cultural cooperation. This is where big space for municipalities is open. The Financial Mechanisms of the European Economic Area and Norway, the Transition Facility Programme or bilateral programmes are very successful in the Czech Republic as well. They provide grants for ideas that cannot be submitted for financing from the European Funds, thus making the playground even bigger. So it is necessary to get informed on new opportunities that open up for local governments.

3) Communication as a base of success

If you are so lucky that in your office you have professionals with vision that would like to do the first and the last for their citizens, with a number of ideas, determined to struggle for the EU money, do not forget that communication is the beginning and the end of every project. In case you do not promote it well among municipal councillors and you are the only one believing in it, it could be doomed if not to failure, then at least to big problems. You must unconditionally get support and a leg for the project from other politicians, preferably by a decree that would provide for its implementation even after the political management of the municipality changes, which necessarily happens after municipal elections. And if it is a project with participation of the citizens, it is also necessary to inform the public and to try to bring them in. Should you not ensure political support for the project, with disapproval you would find out that the project suddenly stammers; here you cannot raise funds for co-financing, there you miss people willing to work on the project. In the worst case, it would be necessary to finish the project before its time and waste a promising idea.

4) Partnership is a path to better rating at project evaluation

Now you have a great project idea, you have come up the labour to work on the implementation of the project, you have done your best to promote it among politicians and you are ready to submit the project design in competition. However, you are still not sure if you reach such a rating that would help your project get above the notional line dividing the successful projects from the unsuccessful ones. How can you then shift your project higher on the evaluation list?

I have already spoken above about importance of the partnership and its usefulness for formation of project ideas, getting new information and experience for the project preparation. However, the partnership is important also for implementation of the project, not only for its potential originating. So while you have already invested into cooperation with your partner town, why not engaging it in the game? Or you prepare a project focusing on social inclusion. Why not inviting in also local non-for-profit nongovernmental organisations that provide social services in the town and its surrounding? But do not do it only formally, perforce. Believe me, in the end you may get more than a few points at project evaluation. By inviting partners to your project, your communication with the citizens will improve, you will find out what they really need or what local entrepreneurs miss so that their conditions for providing services become more comfortable. Cooperation can enrich you not only with new information, but also with mutual use of infrastructure and cost reduction in project implementation.

Nevertheless, the partnership is not only about cooperation with non-for-profit or private sector. In the Czech Republic, there is huge amount of small villages[2] that, if they want to do something for their citizens, must voluntarily associate. Cooperation is necessary in the course of the whole project – during its preparation, submitting or implementation. The one who is able to bridge personal repugnancy and join for the purpose of getting European money is thus awarded with grants helping to come their ideas true, and with more quality and better interrelations.

5) Better avoid risks!

You may have a great project idea; you have found a partner and done everything for your project to be the best. Nevertheless, there are still lots of risks ahead. Of course, one of them is an ever-present threat of lacking funds. In each country that has a chance to draw down the Structural Funds there are different means of co-financing and paying for project preparation. It is often necessary either to fully or to an important extent pay for preparation of the projects. Above that, in majority of cases projects are not completely covered by a grant and their co-financing from own sources must be provided for. This must be thought about in advance and you must make sure you have money both for the preparation as well as co-financing of your project.

[2)] There are 6,244 municipalities in the Czech Republic out of which about 80 % are villages up to 1,000 inhabitants.

In the years 2004–2006, i. e. in the course of the first programming period when Czechia used the European Funds, there was another problem. Co-financing was set in such a way that the costs were first incurred and then reimbursed. However, the state or in case of direct Union programmes the EU sometimes took their time to reimburse the costs. For a limited period of time, municipalities were forced to borrow high amounts of money from private banks in order to cover necessary costs and not to get in delays with their suppliers. Local authorities had to use their reserve funds and the project became dearer by loan interests. In this case there is only one piece of advice: while the state decides on how project costs reimbursements will be carried out, do not stand aside! Via your local government association make sure in advance, that payment obligations do not lie only on you, but that the state and its offices carry their share of accountancy.

6) Your own project managers or an agency?

In the Czech Republic, along with a chance to use the Structural Funds, a number of commercial companies and agencies debouched. They offer local authorities getting a European grant, i. e. writing a project and submitting it under a call for proposals so that the municipality gets financial support for its project. Councillors often make use of them as they are afraid of entering into the complex process of the EU Funds and programmes. Due to the lack of experience local representatives are in fear of uselessly wasted time and they are not sure if they succeed with their project. That is why they prefer relying on professionals from commercial enterprises, in spite of them being motivated by profit. Today, fortunately, quality companies introduced a system that in case a project is not approved for financing they take in for its elaboration only the necessarily expended costs. However, this was not the case earlier and it used to happen that companies cashed their full compensation even though the project was not approved.

But costs are only one disadvantage of commercial firms. The other one is that they bear basically no responsibility for the project itself. If they are at least a bit any good, their duties end with a successful approval of the project; then they get paid for their work and get lost. Obligations linked with implementation of the project stay with the municipality. However, not seldom is the case that as there is almost no linkage between those who prepare the project design for approval and those who sign on implementing it (i. e. the local authority) suddenly officials do not know what actually to do with the project. A project manager is missing that would be in charge of the project and the municipality is not able to fulfil the project schedule or meet its objectives.

It is great if you draw your project close to a successful approval; however, the target is not to get a grant, but to successfully implement the project. The work does not finish with a project approval, but it starts with it! And you need people for that. Either you must lay the agency processing the project before its approval under obligation of taking care of it even after its approval. Or it is necessary to establish your own quality project team with clearly defined responsibilities that would look after continuous monitoring of the project implementation and early enough identify and resolve potential problems. They must fulfil project obligations so that there is not a threat of giving the means back should conditions of the project not be completed. Investing into people and training up your own team who would identify themselves

with the project and implement it to its good effect pays off. And after finding such people, you need not look for a company to process your project idea.

7) Do not forget about your association of local authorities!

My last piece of advice is: do not let anybody make decisions on you without you! Actually, this should be at the beginning of all my suggestions as this is where everything begins. Even before you sit at the table and take a decision to write a project, someone had to make up programmes whose objectives you want to meet. Unfortunately, in the Czech Republic the programming documents origins were motivated namely by state departments tendency to get as much money for itself as possible. Negotiation about programming documents was stigmatised by strong departmental ambitions. Due to that there are too many programming documents now that fall under responsibility of various ministries, thus making the system blind and perfectly suitable for various commercial entities.

It is worth investing your energy and having representatives of your local authorities association already in preliminary committees at departments as well as in a committee roofing the whole routing of the national Structural Policy and disposal of funds. It is necessary to have an eye on the fractured agenda not unnecessarily burdening local authorities in their efforts to get grants. Once it happens, it is difficult to make complex, linked projects where not only infrastructure is built, but also thought of its use. That is to say, one department may approve your project, but the other need not; the whole idea then breaks up.

After the programming documents are completed, take your chances given by the Council Regulation No. 1083/2006 in Article 11[3]. Every member state is encouraged there to organise a partnership with regional, local, urban and other public authorities. Accordingly, the state institutions should not defend from inviting you to a negotiation table and should ask a representative of your association to monitoring committees of operational programmes, to decision-making structures, working groups etc. Make the best of your contacts and opportunities. Not only will you have information at first hand, but you will be able to enrich views of those who decide on the Structural Funds in your country with your experience and possibly reverse conclusions that could be detrimental to local governments.

We should not forget about one thing as well. In the Czech Republic, implementation of the structural support is complicated by strengthening of the exchange rate of the Czech Crown to Euro. According to information of the Czech National Bank, at the beginning of the programming period (i. e. on 29th December 2006) the exchange rate of the Czech Crown to Euro was Euro 1 = CZK 27,495[4]. On 4th August 2008 the rate of exchange of the Czech

[3] Council regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999.

[4] See http://www.cnb.cz/cs/financni_trhy/devizovy_trh/kurzy_devizoveho_trhu/denni_kurz.jsp, Rev. 2008-08-21.

Crown strengthened to one Euro equalling CZK 23,990[5]. During the monitored period strengthening of the rate of exchange of the Czech Crown to Euro amounted to 12.7 percent in total. Considering Euro 26.692 billion allocated for the Czech Republic for the period 2007 – 2013, at 4th August 2008 the exchange-rate loss brought about by stronger Czech currency amounted to CZK 93.555 billion. And further currency evolution is very difficult to forecast, if not impossible.

As regards the European Funds, I consider the above mentioned to be the most important lessons learnt by the Czech local governments over the few previous years. I can say that due to being new, this agenda was one of the most complex ones. A new, original national funding system was elaborated that is even today interlarded with untranslatable Euro slang in which local councillors hardly find their bearing. Promotion of the European Funds by the state was not optimal, too. That all led to marginal popularity of the Funds and to the fact that they are now considered to be a needed evil. But on the other hand, they brought along money and implementation of a number of quality projects without which many waste water treatment plants would not have stood or many cultural events would not have taken place.

1.2.2 Scarecrow of municipalities and regions in the Czech Republic: services of general interest, general economic interest, public procurement and state aid

One of the most complex issues that Czech local authorities had to deal with in connection with safeguarding the EU Internal Market was, no doubt, provision of public services: how to differentiate between services of general interest or general economic interest and to that connected public procurement (i. e. deciding on who would provide the service) and provision of state aid (i. e. subsidies, but also remission of rent etc.). As regards public services, for local authorities completing the Internal Market provisions means to certain extent loss of economic autonomy and space in deciding on what services would be provided by whom. On the other hand, the Internal Market is favourable for the European consumers – they have a guaranteed equal access to provision of services and for better prices. Although this LOGON Report addresses the issues of services of general interest, services of general economic interest, public procurement and state aid, I let myself shortly summarise the basic facts with reference to situation in the Czech Republic.

The role of the state and local governments is substantial while defining services of general interest and general economic interest because based on this definition services are provided or ordered and eventually is reviewed if companies that provide the service did not get from a local authority forbidden state aid. Generally, services of general interest (i. e. public services) are understood to be services focused on citizens' social needs (for example homes for the elderly, crèches etc.), health services not refunded by health insurance companies, education, sports and culture, transport, energy, hygienic services, public order, protection of the environment (waste and waste water treatment etc.), housing (energy and water supply), leisure time services etc. These services meet certain public interest and that is why

[5] See http://www.cnb.cz/cs/financni_trhy/devizovy_trh/kurzy_devizoveho_trhu/denni_kurz.jsp, Rev. 2008-08-21.

they can be regulated by the state, local or regional authorities. Public services are specific in a sense that sometimes they can be highly profitable (e.g. if provided in a city), the other time heavily loss-making and must be subsidised (e. g. if provided in the country)[6]. The term "services of general economic interest" defines services that can be potentially profitable and due to that may compete on the free market. For example, those can be social services that are themselves a specific issue for the EU legislation and whose provision is a subject to many deep discussions and debates.

In the Czech Republic, local authorities have to provide by law two services defined as services of general interest. They are *education and disposal of local waste*; the state here tends to sustain certain standards and in the former finances them, in the latter empowers municipalities to collect local charges for them. The decision on what other services a local authority will provide to its citizens is fully under self-governing competence of the local authority[7]. By making a decision on providing a certain service the service becomes public. The local authority then delegates provision of the service to its own local enterprise, to a non-for-profit nongovernmental organisation or to a commercial company, i. e. a legal entity not established by the local authority. This is where one must make sure that forbidden state aid is not granted and that criterion of local contract awarding in compliance with national and EU law is met. The local authority is held liable for services it sets up for it citizens; it organises, regulates, monitors and financially supports the service.

The European Commission started regulating public procurement and local contracts awarding in 1970, after discussions with the EU member states. At first, they were a few directives that could be enforced only after enterprises got the right to initiate a formal legal proceeding to the European Court of Justice[8]. The state accounts for national legislation regulating public procurement so that it is in compliance with EU law; in consequence, local and regional authorities must apply it. The role of local and regional authorities is inevitable as lobbyists in the course of drafting national legislation that regulates awarding of public contracts, especially if the state tends to decide on setting stricter limits for supplies and services than the European directives do. So as early as the national and European law begins to be harmonised, it is necessary to have a representative of local authorities in various departmental working groups, appeal ministers and politicians who approve laws with help of personal relations and make sure that regional and local authorities are not burdened with obligations more than necessary.

Another liability that municipalities must be aware of is *provision of forbidden state aid.* By state aid (provided by the state, but also by regional or local authorities) can be understood e. g. compensations for losses incurred by provision of a service, liability for loans, capital injections, grants, advantages in a form of rent remission etc. That means treatment possibly considered, by other enterprises operating on the EU Internal Market, to be a competition

6) Jech, J. Veřejné služby obcí. In Černohorský, J. (ed.), Příručka pro zastupitele. Svaz měst a obcí ČR, Praha, 2006, s. 81.
7) Dtto.
8) LOGON Report 2002, Lobbying in Europe. Association of Austrian Cities and Towns, Vienna, 2002, p. 197.

advantage. The Internal Market rules might be breached in case a service could be provided by a commercial company or a non-for-profit organisation, even from another EU Member State, under more convenient conditions. The company or NGO that is interested in providing the service can address the European Commission and the local authority might face a complaint filed with the European Commission, or worse a suit at the European Court of Justice. Obviously, there are exceptions from the state aid rules, e. g. the so-called de minimis rule.

For awarding public contracts, public procurement and state aid the state establishes its own office that should help local authorities find their bearing in awarding services and supplies, not providing forbidden state aid or avoiding redundant suits. In the Czech Republic it is the *Office for the Protection of Competition*[9] that among others provides counselling to local authorities and whose opinion can municipalities use if they are not sure about interpretation of any regulation.

Before the EU accession and for quite a long time after it, the Czech local authorities were not very familiar with the issue of public procurement and state aid and they could hardly understand it. Rules set on the EU level meant entering an unexplored territory and adherence to the Internal Market was considered to be something that local authorities had nothing in common with. Unfortunately, necessity to attentively follow who local authorities submit provision of the service to and under what conditions, or not gratuitously prioritising their own local enterprises otherwise they could face legal suits and proceedings, did not rise until certain local authorities won their personal experience. Some Czech towns already encounter problems with the state aid rules, e. g. those lying near the German frontiers. For example on 16th April 2008, the European Commission started a formal legal proceeding on agreements, concluded between Czech local authorities, of compensations paid for public bus transport to Czech bus transporters in Ústí Region in the years 2005–2007. According to the Office for the Protection of Competition "the proceeding applies to a number of measures, e. g. payments, and liability or capital injections to certain providers of public bus transport in Ústí Region …"[10]. The Town of Třebíč faces an other problem – the same Office examines behaviour of the town that sold municipal land to a private enterprise that, subsequently, resold it with a significantly higher profit. According to the Office, the town did not behave as the so-called "private investor" (seller), i. e. did not make an effort to reach as high profit from the sale of municipal assets as possible[11], which could be considered to be forbidden state aid. Interesting is also an example of the Wireless Prague Project (2006–2008) with which the City began to build wireless telecommunication infrastructure (Wi-Fi). Due to a formal legal

9) See http://www.compet.cz/en/.

10) See http://www.compet.cz/verejna-podpora/aktuality-z-verejne-podpory/evropska-komise-zahajila-formalni-vysetrovaci-rizeni-o-kompenzacich-vyplacenych-ceskym/.

11) According to the Office for the Protection of Competition, „cases not considered to be private investor's behaviour are generally those in which assets, based upon an expertise, is undersold, or if assets is not sold in an open, transparent and unconditional selection procedure. See http://www.compet.cz/verejna-podpora/aktuality-z-verejne-podpory/prodej-pozemku-v-trebici-nebyl-verejnou-zakazkou-uohs-vsak-pripad-setri-z-hlediska-ve/.

proceeding filed to the European Commission (DG Competition) by the Association of Telecommunication Operators, the City did not receive support from the EU Funds at first. Subsequently, it underwent a difficult process of evaluation by the European Commission that ended up with a decision that infrastructure for internal needs of the City built in the first phase of the project was safe, and that following steps would have to go through a notification process of the European Commission[12].

Without a question, adherence to competition and Internal Market rules has important effect on local authorities, which forces them to devote it a lot of energy and work. The issue is the more uncertain since a list of services of general interest does not exist, as well as a list of services in general economic interest. An important role belongs to national states and their individual cultural and historical – political otherness. State aid rules are set by ECJ case-law and cases are examined individually according to a concrete situation. Helpful may be an office established by the state that should be, in case of uncertainty, consulted and asked for an opinion.

1.2.3 Social affairs and quality of provided care: Indirect impact of the EU

Specific issues, where the EU affected the Czech Republic partially before and further after the accession and that are not so much spoken about, are those with indirect EU impact and enforced by so-called soft means. They are policies on which the European Council agreed they would remain to be left under competence of the EU national states and relate generally to *unemployment, education, fight against poverty and social exclusion and to them connected social and health services.* Although they are the national states that account for them, for various reasons (e. g. when unemployment in the individual member states outran control of the national governments) it was necessary to adopt policies leading to a more complex su-pranational solution. At these policies the EU member states refuse binding supranational legislation either due to great differences between the states or because they arise from national identity or culture of the state. These issues are not subject to primary or secondary EU law, however, the European Council and the European Commission do their best to coordinate them, support cooperation between the states and their mutual learning, thus contributing to effective information exchange and quality good practice[13]. Disadvantage of this system is that measures coming into being in such a way are not interconnected with the EU member states fiscal, monetary or revenue policies. The above described practice is called the Open Method of Coordination.

As for fight against poverty and social exclusion and as for developing suitable conditions for social inclusion, an important role belongs to *social services.* On the one hand they are not affected directly by primary or secondary EU law and their organisation or what conditions and regulations they are subject to falls under competence of the Member States. But on the

12) State Aid n° NN 24/2007: Czech Republic – Pratur Municipal Wireless Network.
13) Jabůrková, M., Srnová, E., Sociální politika, evropský kontext, systém sociálních služeb v ČR. In Manuál zadavatele sociálních služeb, Instand, 2008, p. 14.

other hand they are subject to pressure from European institutions on creating competitive market environment and debate whether governing them should be the same competition rules as in other service sectors. For the time being, an opinion that social services have a special position due to their specific character prevails. Nevertheless, local authorities must respect competition and Internal Market rules and properly submit provision of these services, i. e. avoid forbidden state aid.

Social services are also specific due to another reason: they have been through rapid development and changes. Services professionalize, their form have altered from purely public to mixed, with commercial sector playing an important role, their component is not only provision of social services, but also counselling and giving advice. There are more reasons for such changes, e. g. global demographic social and economic turnovers supported by technological development. Demographic changes project into lower birth-rates and rising number of senior citizens. While becoming scarce, number of employees in social services increases. At the same time those who would guarantee stable financing of needs of the elderly by contributing to the tax system keep missing[14]. In spite of the Czech Republic facing baby boom these days – as the decision to have a child made strong age groups of the 70's – professionals predict that current population wave will soon lower.

The Czech Republic had to adapt to the above described development, too. In the first place, social services are provided by local authorities, followed by regions, NGO's and to a limited extent also the state which owns several social houses. The most burning issue that local authorities faced while providing social services was mainly a missing act regulating social services that would define and allow stakeholders operate safely. Non-existence of such a law brought about another uncertainty – it was basically impossible to follow and evaluate quality of provided care in social service establishments and houses, and possibly hold providers liable for poor quality. Thus in the Czech Republic *quality* became one of the factors most influenced by the EU accession. In the transforming Czech society it becomes a domain slowly, mainly due to the fact that in the totalitarian regime human rights were not respected as they are in the West and this (bad) habit persists in human inner space for a long time.

An example of the EU states whose history was not broken by decades of communist regime with violently ceased continuity of what was right was, without doubt, helpful for reflecting quality. Another important aspect was openness and willingness of certain state officials at the Ministry of Labour and Social Affairs of the Czech Republic to learn something about quality and standards of provided care, thus preparing conditions for provision of good, quality care also in the Czech Republic. Even before the accession of the Czech Republic to the EU the first pilot project originated, prepared together with the British partners, that aimed at introducing quality standards into system of evaluation of social services. Gradually, quality started to be promoted from the bottom up: the regions began to voluntarily introduce standards in their own establishments.

[14] Jabůrková, M., Srnová, E., Sociální politika, evropský kontext, systém sociálních služeb v ČR. In Manuál zadavatele sociálních služeb, Instand, 2008, p. 15.

Importantly, the whole process was helped by bigger transparency of municipal offices and implementation of democratic communication processes in a form of community plans in municipalities and their projection into regional strategic plans. On their elaboration cooperated both service submitters (i. e. those who fund the service – local and regional authorities) as well as their providers (the state, NGO's, local and regional authorities, churches, commercial enterprises etc.) and, last but not least, those who receive them (the clients). The results were reflected in the Act regulating Social Services, at that time drafted by the Ministry of Labour and Social Affairs of the Czech Republic.

Although still in need of certain amendments, the Act regulating Social Services is already valid. Quality is more spoken about, citizens start to know their rights and the situation has significantly improved. No doubt has this been largely contributed to by the EU accession and wider openness to western practices. For example, quality is a firm part of the National Report on Social Protection and Social Inclusion Strategies 2006–2008 (besides financial sustain-ability of social and health care services and their as wide accessibility as possible). Above that, provision of quality care is a part of strategic documents for drawing down the European Social Fund and a number of projects focused on provision of quality social care. Even though the situation is not yet ideal, I can conclude with a few positive recommendations.

1) Do not forget about strategic plans submitted to the European Commission

In any case, being influential in drafting strategic plans submitted to the European Commission (the national action plans)[15] pays off. They are the more important as they serve as a basis for evaluating projects prepared for drawing down the European Funds and are strongly coherent with objectives of the programming documents. On the other side, relying on the European grants led to missing interconnection between the national action plans and national budgets. It testifies that the departments have not yet identified themselves with the national action plans, and their drafting, elaboration and consulting is considered to be just a necessary evil.

It is worth avoiding a mistake that affected also local and regional authorities in Czechia – information on strategic plans and national action plans was fragmented and, at the beginning, they were not accounted for important. This reflected in vaguely set objectives and further impossibility to measure them. Roots were in an already mentioned problem that departments in the Czech Republic face: strong concentration on their own agenda that is strictly demarcated, inability of state officials to agree on commonly enforceable solutions and reluctance against inviting local representatives, who are personally affected by drafted measures, to the negotiation table.

[15] For the years 2005–2008, after the revision of the Lisbon strategy, the documents on respective sectors, e. g. employment or social inclusion, became a part of more complex strategic documents. In the Czech Republic it is the National Lisbon Programme 2005–2008 (National reform Programme of the Czech Republic) that includes, besides a chapter on employment (the former National Action Plan on Employment), also macro and micro economic chapters. Similarly, the National Report on Social Protection and Social Inclusion Strategies 2006–2008 integrates in itself the Social Inclusion Action Plan 2006–2008, Strategic Pensions Report and Health and Long-term Care Strategy.

2) High-quality association of local or regional authorities can do a lot!

As it has already been mentioned above, it is important to have a representative of an association of local/regional authorities in working group meetings taking part in drafting strategic programming documents for the European Commission. His/her role is not easy. He/she must be a skilled "diplomat" who is able to negotiate well, must know interests of local and regional governments, and must not be needlessly clashing or excessively bendable. Such a person is beyond price then and is able to have a notable impact on proposed measures.

3) Do not underestimate information, it is an important weapon

Out of doubt, it pays off to be a step ahead of the state officials. This may be reached both by learning from more experienced foreign colleagues (e. g. when introducing standards of quality care), or following what the country is in for in detail, what documents it must elaborate or which criteria meet. It is necessary to concentrate not only on proposed measures, but also on their link to national plans and make sure they are connected to departments' budgets. Important is also interconnectedness to the European Funds and drafted programming documents (the National Strategic Referential Framework or Operational Programmes). It proved good addressing state officials with an offer of solving a problem they have to complete for the EU, offering expertise or professional help. Making contacts on personal basis, trust and good image of your association is much more effective that critique and depreciation of what officials do wrong or how they do not communicate.

4) Public procurement rules must be observed also in social services

The last issue that might bring bad sleep to counsellors is the already mentioned awarding of public contracts and fulfilling the state aid rules. When local authorities submit a service, they should do it in such a way that they avoid prefering their own, local enterprise against other possible providers (e. g. NGO's). This obviously means respecting public procurement prin-ciples as well as necessity to avoid inadequate (both financial and other) aiding of local enter-prises while providing social services. The topic is not easy or definite, for sure. At any rate, do not be afraid to use help of your official office that is in charge of public procurement and state aid – if nothing else, it will negotiate the European Commission representatives' opinion to your issue.

1.3 CONCLUSION

I attempted to shortly recapitulate the most up-to-date and maybe not most common issues that local or regional authorities had to learn on their way to the EU. Each country is obviously different, every state administration has its own approach and procedure, and countries differently communicate with local and regional authorities. Unfortunately, the practice is that the state officials do not favour communication too much; they consider regions, cities, towns or communities to be only one of many EU Funds beneficiaries, similarly as entrepreneurs or NGO's.

They do not understand that local and regional authorities have their own share of accountability to their citizens resulting from the nature of elections and political representation.

Although it may not sound too good, long-term formic work pays off. Personal contacts and patient explanation that self-governments are not enemies are a basis for good communication and proper terms with state administration officials. Unchangeable is the role of an association of local or regional authorities: you yourself as a region, city, town or community hardly put through what you could do if there were many of you. It is also advisable to strengthen your position by means of creating coalitions with partners who follow similar interests. As an association of local authorities, the Union of Cities, Towns and Communities of the Czech Republic in the long term cooperates with the Association of the Regions of the Czech Republic and endeavours after common opinions for its stand points. It is also worth not underestimating impact of representative associations located directly in Brussels. That is to say, this is where everything starts; this is where the 60 % of legislation affecting local and regional authorities is drafted, this is where things may be changed for your own benefit. Important is the cooperation with the Council of European Municipalities and Regions (CEMR) as well as your own initiatives, both via your own representation in Brussels or addressing your national Members of the European Parliament.

Communication and lobbying are also other important aspects of operating of an association of local/regional authorities. In connection with the EU accession, they start as early as in the course of discussing the terms of the Accession Agreement. For example, the Czech Republic bound itself, according to the Directive 94/62/EC[16], to percentual volume of collected recycling waste. Obviously, they are the local authorities that have to implement these obligations. The same applies to an obligation to build, according to the Directive 91/271/EEC[17], sewerage systems and ensure urban waste water treatment[18]. Again, they are the cities and towns that have to find funds and build waste water treatment plants. That is why as early as the agreement starts being argued about, strive for participation in negotiations with EU representatives, communicate with your representative office at the EU in Brussels, consult commitments that the state would like to accept and that will affect you, councillors of local and regional authorities. Motivate your association and do your best that it has a quality representation. But make sure that in your work with state authorities you are pro-active, constructive, innovative, transparent and predictable as much as possible. Just so you will manage to build reputation and achieve success.

16) European Parlament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ L 365, 31 December 1994, p. 10).
17) Council Directive 91/271/EHS of 21 May 1991 concerning urban waste water treatment (OJ L 135, 30 May1991, p. 40).
18) Agreement of the Czech Republic's accession to the European Union. See http://www.sagit.cz/pages/uztxt.asp?cd=156&typ=r&refresh=yes&det=&levelid=496754&levelidzalozka=&datumakt= 01.05.2004.

Chapter 2 LOGON EXPERIENCE AND GUIDELINES FOR LOCAL GOVERNMENTS ON THEIR WAY TO THE EUROPEAN UNION

LOGON EXPERIENCE AND GUIDELINES FOR LOCAL GOVERNMENTS ON THEIR WAY TO THE EUROPEAN UNION

Thomas Prorok – KDZ – Centre for Public Administration Research, Vienna

Austria's location at the nexus between "East" and "West" as well as the historical ties with its neighbours to the east and southeast prompted the Association of Austrian Cities and Towns to launch LOGON (Local Governments Network) in the late 1990s. LOGON defines itself as a network of associations of local government, bringing together EU Member States and "EU candidate countries". Originally, LOGON aimed to convey experience gained by the associations of local government in Austria, Finland, and Sweden during their respective processes of EU accession and as new EU Member States. The Central and Eastern European partner countries also used this exchange of experience to strengthen their local and regional structures. It was a welcome side-effect of LOGON, which was all the more important as federal and municipal structures in those countries were only developed in the 1990s and were partly still in the implementation phase. During this period of transition, the horizontal and, at times, informal exchange of experience between associations of local government from EU and future EU countries served as a stabilising anchor, supporting the local governments and the relevant associations in Central and Eastern European countries in the rough seas of transformation. LOGON did not come to an end even after these countries had become EU Members. Rather, the regional focus shifted seamlessly to Southeastern Europe and work has begun afresh with the countries of the Western Balkans.

Based on the LOGON experience the following considerations and recommendations can be made.

2.1 TRANSFORMATION

LOGON has been closely involved in the phase of governmental and economic transformation, which started with the fall of the iron curtain. All countries are undergoing profound structural change. (Relatively) centralised countries are turning into federalist states in compliance with the requirements set forth by the Council of Europe and the EU. As a consequence, several partner associations and their members (i.e. cities, towns, and municipalities) emerged only recently and are unable to draw on any institutional memory or experience. This clean slate, however, also makes it possible to consolidate best practices from different countries. It is often difficult to comprehend the rigor, and at times even single-mindedness, with which radical changes are being pushed through to implement a complete redistribution of power. What is interesting, however, is how fast some cities and associations are learning, and are compelled to learn, to utilise the European Union. To be eligible for EU subsidies and funding, the skills of project management, "EU Project Cycle Management" and "EU funding" need to be learned quickly and numerous cooperation projects initiated (see also the experience of Mr.Oldřich Vlasák in the chapter "Impact of EU entry on the Czech local authorities").

2.2 PREDOMINANCE OF NATIONAL GOVERNMENTS

In all EU agendas – from accession negotiations to day-to-day decisions in the Council of the European Union – national governments act as primary decision makers on EU policy matters. This does not make it easy for local governments and their associations to make themselves heard. Austria, without doubt, has developed model instruments to integrate the interests of local governments. During the accession phase it was the "Rat für Fragen der österreichischen Integrationspolitik" (Council for Austrian Integration Policy Issues), where the Association of Austrian Cities and Towns was represented. Since becoming an EU member, the Austrian Association of Municipalities and the Association of Austrian Cities and Towns as representative bodies of Austrian local communities have enjoyed the right to nominate three representatives to the Committee of the Regions (Art. 23c (4)), the right to information and the right to present their opinions regarding all EU projects of the Federation (Art 23d (1)) by virtue of Austria's Federal Constitution.

However, as so often the case in Austria, a distinction needs to be made between the "real constitution" and the "formal constitution". Certainly, the legal (constitutional) position of the local government representatives and the principle of local self-government in Austria are exemplary. The real constitution however, paints a more differentiated picture. Both at Austrian and at European level, the appreciation of the interests of local governments could be better. The Austrian textbook model for this is without doubt that of the Finanzausgleich or fiscal equalisation, which in its current format once again takes only limited consideration of the special requirements of local governments. In addition, it was also impossible to avoid the "beverage tax" issue, since the European Court of Justice repealed the tax, which is of major importance for cities and local authorities.

Applied to the European level, Austria's real constitution provides that the offices of the Association of Austrian Cities and Towns are integrated into the Austrian representation in Brussels, while the understanding of and awareness for communal issues could be better. Below, you will find just one of the many examples I witnessed when starting out on my activities. An interministerial conference on e-Government[1] had to draw up a final resolution determining the relevance the EU would have for future EU e-Government funding programmes. The attending city and town representatives organised themselves in the framework of ELANET[2] and endorsed the Italian delegation, as this delegation was most aware of the fact that mentioning local governments in the declaration would improve the chances of municipal e-Government projects receiving subsidies in future. In the end, they were successful and the declaration made reference to the significance of local governments for e-Government initiatives.

This shows how the representation of municipal interests can be both easy and complicated at the same time. It is not only about asserting one's own interests at the expense of others (regional authorities), but also about understanding. Since national governments are the

1) E-Government - From Policy to Practice, 2001.
2) ELANET: CMER's network on information society.

primary decision makers in both the Council and the Commission, they must have knowledge of and understanding for the cities' and towns' situation and interests.

Although the European Parliament is steadily becoming stronger and while it is open to and appreciates municipal interests, it is still too weak to balance out the lack of awareness on the part of the Council and the Commission. Nevertheless, EP members have become key contacts for municipal concerns. This is also demonstrated by the fact that an increasing number of local politicians are also becoming members of the European Parliament.

A current example for the representation of municipal interests by Parliament is the Services Directive[3]. Owing to the European Parliament's persistency, provisions regarding services of general interest were included in the end, which, in the view of the local governments, somewhat mitigated the Services Directive and to a certain extent guarantees that municipal services of general interest will not perfunctorily be sacrificed to the open market.

All in all, this demonstrates the relatively week position local governments have within the political structures of the European Union, a fact that even the European Parliament is currently able to counter only to a limited extent in spite of positive developments. Due to its relatively weak position as an advisory body and its main focus on regions, also the Committee of the Regions, which is anchored within the EU's institutional structure, can not fill this lack.

Over and over again, LOGON has demonstrated the following: The first lesson for the associations of local governments is to realise that national governments are the primary contacts in the course of EU accession negotiations. Usually, however, these have other concerns and interests than to represent the interests of local governments. As a result, municipal interests are frequently bargained away by government representatives or abandoned in exchange for other concessions in the course of bargaining.

Overall, it must be noted that the political clout and assertiveness of local governments within the European Union is low; too low – both during the accession phases and also in the framework of EU membership. Communities continue to depend on national governments.

The associations of local governments within the European Union therefore have three options:

1. The main option continues to be advocacy through one's own government. The associations should maintain excellent contacts and relationships with the ministries – both at the level of civil servants and at political level. This will guarantee the timely involvement in (legislative) projects at both national and EU level. Over and beyond this, this will put the associations in a position where they will be recognised by the ministries as experts whose advice is affordable and is sought willingly. The Austrian system of constitutional integration of local government representatives serves as a model for many associations in neighbouring countries. However, Austria's real constitution also shows that in day-to-

[3] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

day work such “generous” legal safeguards are not always interpreted in favour of local governments. That is why the representatives of Austrian local authorities have to make themselves heard each day anew.

2. European Union membership provides the associations of local governments with new channels to represent their interests. Or in other words: by becoming members, a major share of the decisions affecting local authorities is transferred to EU level, obliging the associations to use these new channels. In so doing, the Council of the European Union is preferably lobbied using the assistance of national representatives. Especially the European Commission and the European Parliament (as well as the Committee of the Regions) are open to information and opinions coming directly from the associations of local governments. Success in this context depends considerably on well-prepared and judicious arguments, reflecting the EU’s policy guidelines. There is no support for a “transparent“ representation of interests. The position of local governments is too weak for that.

3. In order to achieve a direct influence on the Council, Commission and Parliament associations of cities or towns need to incur considerable expenses, which is impossible for individual associations. The CEMR (Council of European Local Authorities and Regions)[4] channels the positions of its member associations and uses this as a basis to develop an active policy of representation of municipal interests at EU level. It is thus advisable to actively use and support the CEMR. This will strengthen CEMR overall and in the medium-term also the cities, towns and munici-palities throughout the EU.

   Another interesting fact is that the associations of local governments of all Southeastern European countries have become CEMR members, allowing for a valuable exchange of information between associations from EU Member States and – with a high degree of likelihood – future EU countries. The problem of scarce information, a dilemma the associations must grapple with during accession negotiations, can be somewhat alleviated in this manner. Information that is not passed on by the national negotiating team to the representatives of cities, towns and municipalities can be obtained from CEMR. LOGON has therefore always considered itself a CEMR task force, passing on information and experience not adequately transmitted by governments to the representatives of their cities, towns and municipalities – on the one hand, so as not to weaken their own negotiating position in Brussels and at home and, on the other hand, because national negotiating teams simply lack knowledge and experience regarding the requirements of local governments.

Finally, we also need to note that the permanent strengthening of the European Parliament has produced positive effects for local governments. Moreover, better integration of CEMR into the EU’s institutional structure must be advocated. The European representation of the interests of local governments does not amount to standard lobbying, such as that of

4) www.ccre.org.

pharmaceutical or automotive companies in Brussels. Here, Austria's approach of legal integration and consultation may indeed serve as a model. In addition, the associations of local governments should improve the reciprocal coordination of their activities in Brussels and promote cooperation, for instance in order to set up municipal expert pools handling specific topics and passing on their findings to all national associations of local governments.

2.3 THE COUNCIL OF EUROPE AND THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT

Although this paper puts its focus on the relationship between cities/towns and their associations with the European Union, we must not forget that one of the most important documents for municipalities does not originate from the EU but from the Council of Europe. The European Charter of Local Self-Government[5] provides for extensive municipal self-government modelled after the Austrian system. This document, which is of significance particularly for transition countries in the process of becoming EU members, is not part of the EU acquis and is not included in the Treaty of Lisbon. Hence, the EU does not guarantee extensive municipal self-government. For the Treaty of Lisbon municipal self-government is defined in the constitution of the respective Member State[6].

Nevertheless, the European Union requires candidate countries to implement the Charter before they are accepted as members. Even beyond the EU enlargement horizons – from Azerbaijan to Russia – this document has become a main pillar of understanding and support for local self-government.

The Council of Europe deserves full praise for doing this "ground work" and LOGON takes price in having collaborated on the Council's "Towards a modern local government association"[7] toolkit. This publication aims at equipping associations of local governments in transition countries with tools and guidelines that allow them to measure the performance and capacities of their organisations and – based on the results – implement measures to enhance efficiency and effectiveness, i.e. to initiate improvement measures within the associations. To this end, an editorial committee was set up under the patronage of the Council of Europe and UNDP (United Nations Development Programme), comprised of experts with experience in working with associations of local governments in transition countries and the toolkit was developed in the course of 2006. Various self-assessment grids for all relevant aspects of associations of local governments guide toolkit users step by step to new insights and modernisation. For LOGON, this was a unique opportunity to contribute experience gained over nearly a decade in the development of associations of local governments.

5) Federal Law Gazette 357/1988.
6) www.staedtebund.gv.at.
7) www.kdz.or.at.

2.4 SELECTED TOPICS OF THE EU ACQUIS CONCERNING THE LOCAL LEVEL

Even though local government does not fall into the jurisdiction of the EU or EC, the primacy of Community law must be observed by the local governments in a number of ways. For example, with regard to the right of EU citizens to vote in local elections, the freedom of movement of citizens and workers, the freedom to provide services, the ban on state aid, restrictions on public enterprises for the benefit of competition, EU environmental law and social requirements (also for local governments as employers), services of general interest and in view of the general ban on discrimination on grounds of nationality. The list could be continued. Some distinctive points from previous LOGON years are listed below.

2.4.1 Public procurement and state aid

Issues of public procurement and state aid play a permanent role in the LOGON working groups. This resulted in the publication of two papers on these issues:

- LOGON Reader 2004 – A Guide to the Competition Rules for State Aid in the European Union[8];
- LOGON Guide – A Guide on Services of General Interest[9].

The first LOGON Report in 2000 already had a foreboding of the direction that would be taken. It includes the following finding: "Resulting from the liberalisation of public procurement due to the adoption of the EU regulations, local authorities will be faced with difficulties notably in the context of granting contracts to local businesses and with regard to their own municipal enterprises."[10] This premonition has been more than confirmed and the Services Directive is certainly impacting the local governments harder than the boldest of expectations could have foreseen in 2000. The Vienna Declaration on Services of General Interest[11], drawn up as part of the LOGON Conference held in 2003 in Vienna, did not change this: "The Conference strengthens the position of the Council of European Local Authorities and Regions (CEMR) and the European Centre of Enterprises with Public Participation (CEEP) in stating its opposition to any attempts to impose European law on local governments, for example the compulsory competitive tendering of SGI. It is the essence of local and regional democracy that citizens elect their representatives, who are accountable to them. Local and regional services are at the heart of this issue of democratic accountability. We cannot build a popular united Europe without respecting Europe's grassroots democracy and diversity."

2.4.2 Local finances

The impact of EU accession on local finances are of major relevance for LOGON partners. Therefore, Austria has been providing two new instruments since its accession, which have met with considerable interest: the consultation mechanism and stability pact.

8) LOGON Reader 2004 – A Guide to the Competition Rules for State Aid in the European Union; WIen, 2004; www.logon.eu.
8) LOGON Guide – A Guide on Services of General Interest, in LOGON Final Guide 2005, Wien, 2005; S. 89–223.
10) LOGON Report 2000 – Experiences made by Associations of Local and Regional Authorities in Austria, Finland and Sweden on Issues related to EU Accession, Vienna, 2000, p. 26.
11) Vienna Declaration on Service of General Interest: Final Declaration of the 2003 LOGON Conference of 3 and 4 November at the Vienna Town Hall. Included in the LOGON Final Guide 2005, Vienna, 2005; p. 22–23.

These instruments were developed to attain the objectives of the stability policy ("Maastricht" criteria) and were embedded in Austria's federal structure. The "consultation mechanism" stipulated in the Constitution requires legislators to consult the other regional authorities – hence local authorities as well – if planned actions might affect them (additional burden). The national stability pact requires the regional authorities to coordinate themselves when setting their fiscal targets (or deficits).

As mentioned above, the real constitution is frequently more informative than written law. This also applies to the two instruments, consultation mechanism and stability pact. The Austrian real constitution shows that the consultation mechanism has not led to any results so far and that the stability pact has resulted in restrictions of the budgetary latitude the local governments enjoyed, since they are expected to reduce the "federal deficit" together with the federal provinces.

The list of "local finance" topics addressed is long. By way of example, allow us to cite the LOGON Report 2000 once more, as it foresaw a problem which shortly afterwards became sad and expensive reality for Austria's local governments: the beverage tax: "The examination of the EU conformity of the beverage tax may bring about serious financial burdens for Austrian local and regional authorities. Although these charges had been declared to conform with EU law during the accession negotiations, their current status is very unclear in view of the possibility that it may change once more."[12] The beverage tax was subsequently repealed by the European Court of Justice. Local governments lost a source of income and must now repay any beverage tax already unduly levied.

The Austrian beverage tax issue, however, provided LOGON partner associations with a central insight: an intensive review of governmental promises made as part of EU accession negotiations is urgently advised. Because, in case of doubt, local governments will be the ones to pay (even more).

2.4.3 The European Constitution

It may still be unresolved whether and in what form the EU Reform Treaty will be realised. But treaty negotiations are an important topic for LOGON in any event. From the point of view of the associations of local governments, this primarily concerns safeguarding the autonomy of local authorities in EU treaties and including elements of the European Charter of Local Self-Government. Both these objectives were not fully achieved. The current Lisbon Reform Treaty for the first time at least recognises the principle of local and regional self-government.

2.4.4 Environmental policy

European Union environmental legislation comprises well over 200 guidelines and directives. Many of them directly or indirectly concern the local governments of the European Union.

[12)] LOGON Report 2000 – Experiences made by Associations of Local and Regional Authorities in Austria, Finland and Sweden on Issues related to EU Accession, Vienna, 2000, p. 27.

LOGON therefore has dealt with the topic in detail and issued a publication of its own. LOGON Studies 2004 – Innovations in the Field of Waste Prevention[13]. With regard to the topic of environmental policy, it mainly intended to provide information about potential financial and technical challenges for local governments resulting from the EU's environmental policy. At best, this has resulted in exemption clauses in the various countries' accession treaties. Regarding the Urban Waste Water Directive[14], a central directive regulating waste water treatment, LOGON partner countries were able to obtain numerous extensions to deadlines for attaining the EU standards set forth by the Directive: Czech Republic 2006, Malta March 2007, Lithuania 2009, Estonia 2010, Cyprus 2012, Latvia, Slovakia, Poland, Slovenia and Hungary 2015.

2.4.5 Regional and structural policy

LOGON put the main focus on the funding programmes in the know-how transfer. While technical issues, such as establishing the NUTS regions[15], also played a role, interest centred mainly on issues of financing and funding. Of relevance in this context were Austria's new access options to EU regional funding: Strict target orientation and several years of programme planning – often in combination with an application scheme – based on project management principles in Austria also enhanced the transparency of some former subsidies provided by the Federation or the federal provinces. Programmes are planned in cooperation with the European Commission and national regional authorities and hence requires long-term strategic decisions regarding objectives and methods of regional funding. The co-financing principle acts as a filter that supports funding only for meaningful projects that are able to raise additional funds at national level.

Austria has an instrument for cooperation between the federal government, the federal provinces, municipalities and other relevant representative bodies in the form of the Austrian Conference on Spatial Planning (ÖROK), which is considered a model for preparing and implementing regional EU funding in an EU Member State.

2.5 GUIDELINES FOR LOCAL GOVERNMENT ASSOCIATIONS (LGA) ON THE WAY TO THE EUROPEAN UNION

The selected topics of the EU acquis demonstrate the need for dealing with the EU (European Union) directives and regulations that affect the local and regional level in individual countries in a timely and comprehensive manner. Based on the LOGON experiences the following steps have to be set in order to be prepared for the membership and membership negotiations for the European Union.

13) LOGON Studies 2004 – Innovations in the Field of Waste Prevention, Wien, 2004.
14) Directive 91/271/EEC.
15) Systematik Statistischer Regionen Europas.

2.5.1 Development of a EU Strategy

The preparation for EU membership negotiations through the LGAs starts with the development of a strategy. Although the term strategy is used exhaustively and so often recommended by consultants it has to be stressed on this place again. Strategy means that the LGA bodies start a process to define a broadly accepted plan for the preparation of the EU membership and negotiations based on common objectives. The following points present some recommendation of which should be included in the strategy.

As mentioned above it is the task of each Member State to conduct accession negotiations and, following accession, to represent also the interests of other levels of government (local, regional) in the EU legislative process. Therefore it has to be a core interest of the LGA to have information and communication channels to the government regarding the negotiation process. This means that although it is about the development of a EU Strategy for the LGA the strategy mainly focuses on the cooperation the national government. With the EU membership this focus changes and the institutions of the European Union reach higher importance.

2.5.2 Staff and organisational requirements

Of course the strategy should cover main questions like staff and organisational development. The LGAs need additional staff to be able to handle the requirements of EU negotiation. At the Austrian Association of Cities and Towns two to three persons dealt predominantly with European issues.

Trainings have to be organised and conducted to improve the quality of European work of the politicians and administrative staff of the LGAs and members. Training has to cover EU institutions and functioning, as well as with EC law. But languages and project management should have the same level of importance in the trainings as public procurement, subsidy control, environmental standards etc.

Concerning the organisational requirements a “European Committee” consisting of politicians and municipal experts should be founded. It is responsible for the development and implementation of the EU strategy and prepares the EU related decisions for the board of the LGA (especially the following issues: “Screening of the national law relevant for the local level”, “Policy Papers” and “European Integration Working Group”).

2.5.3 Screening of the national law relevant for the local level

The LGAs have to be aware that the national governments start their preparations with the screening of the compatibility of the national law with the EU law, the so called acquis communautaire. The specific needs or views of the local levels are mostly not included in these screening processes. This has to be requested or organised by the LGAs. In any case it is the responsibility of the LGAs to take part in the screening chapters which concern the local level. At least the LGAs have to monitor the screening parts relevant for the local level. Who else could provide the local expertise than the LGAs?

The screening process should be oriented on the expected EU negotiation chapters: Free Movement of Goods; Freedom of Movement for Persons; Freedom to Provide Services; Free Movement of Capital; Company Law; Competition Policy; Agriculture; Fisheries; Transport Policy; Taxation; Economic and Monetary Union; Statistics; Employment and social policy; Energy; Industrial Policy; Small and Medium-sized Enterprises; Science and Research; Education and Training; Telecom and IT; Culture and Audiovisual Policy; Regional policy and co-ordination of structural instruments; Environment; Consumer protection; Justice and Home Affairs; Customs Union; External Relations; Common Foreign and Security Policy; Financial Control; Finance and Budgetary Provisions; Institutions; Other.

The screening process can be organised together with the screening activities of the national government but also a separate project of the LGA is possible. This can be organised with an expert hired by the LGA or through external support. In both cases financial support from donors is a sustainable investment.

2.5.4 Policy Papers from the LGAs

The screenings should result in the definition of problem areas where the national law has to be adapted in order to achieve EU conformity. Based on the screening results the LGAs have to prepare Policy Papers. These Policy Papers are developed by the responsible committees of the LGAs and summarize

- the legal situation,
- the consequences for the local level,
- the LGA proposal for a national position reflecting the needs of the local level and
- the financial and legal consequences if the proposal of the LGA will be rejected by the national government or the European Union.

2.5.5 Implementation of a European Integration Working Group

The LGAs should insist on the establishment of a common working group on EU Integration between all levels of governments (national, regional and local). This working group can be lead by the central government at highest level. In the Austrian case it has been the federal chancellor who was responsible for this working group which was called “Council on Austrian Integration Policy”. This European Integration Working Group can be supported by ministerial working groups which are responsible for the operational support and the elaboration of technical papers.

The working group allows the LGAs to take part in the formulation of national position papers as bases of the membership negotiation. This guarantees that attention is paid to the local interests at least in the formulation of the national position papers. Otherwise it can easily happen that fundamental local interests are not represented during the negotiations with the European Union. The reason can be very simple: National governments often are not aware of the needs and necessities of the local level. If local governments expect from their national representative to deal with local interests during the membership negotiations they have to assure that the negotiators are aware of the local agenda. How should a civil servant from a national ministry responsible for the negotiation of a special part of the environment chapter

know about the consequences of EU-environment standards for local sewage treatment plants? The answer is easy: This information has to be provided actively by the local government associations.

But often it can be observed that also the LGAs and the local governments are not fully aware of all details and possible implications of a EU-membership. This is a further argument for the implementation of a European Integration Working Group. Only an institutionalised dialogue between the governmental levels of the accession state guarantees a comprehensive and deep preparation of the local governments and the LGAs. It allows and forces them to draw internal policy papers define positions of the associations which in the first step have to be agreed in the European Integration Working Group and adopted in the national position papers for the membership negotiations.

After the foundation of the European Integration Working Group the members have to agree on a working agenda based on the negotiation chapters of the EU. The LGAs have to decide to which chapters they have to contribute. As result the European Integration Working Group should provide common position papers for all EU negotiation chapters. These common position papers reflect the views and needs of all participants of the European Integration Working Group. Of course the position papers are compromises between the governmental levels and do not guarantee the enforcement during the EU membership negotiations. But they clarify the backgrounds and needs of the local governments. Besides the negotiation for the EU membership this clarification is also important for the relations to the national government and the local governments (associations) themselves.

Concerning the relation to the national government the position papers reveal the thematic areas where the local governments need (financial) support if the membership negotiations do not succeed. E.g. if EU environmental standards have to be implemented which need investments from the municipalities the local governments associations can use the position papers as arguments for requesting financial support through the national government. But of course these considerations have to be transparently prepared in the policy papers of the associations and integrated in the position papers of the European Integration Working Group.

2.5.6 Information and Communication

By drawing the policy papers through the local government associations and based on that the formulation of the national position papers for the EU negotiation chapters the LGAs also start internal information processes. This means the policy papers direct not only to the national government and the European Union but also to the members of the LGAs. The members have to be aware of the consequences of a EU membership. And no better means of communication can be developed than the elaboration of a common position in cooperation with the experts in the municipalities within the LGAs. Therefore LGA policy papers should be developed for most of the EU negotiation chapters, also those issues where local competencies or tasks are limited. E.g. public procurement or state aid rules will not be open for changes during the negotiations. Nevertheless LGA policy papers have to make clear the

consequences of EU law on public procurement and state aid to the members: to the elected personal and management as well as administrative staff.

Further more the first LOGON Report 2000[16] presented additional information activities of the Austrian Association of Cities and Towns during the Austrian EU membership preparation:

- The Austrian Association of Cities and Towns organised three general assemblies("Städtetage", in 1989, 1991 and 1994) with plenary sessions and working groups on European issues;
- A study on the possible effects of EU membership on the local level has been made;
- The Austrian Association of Cities and Towns reported monthly within its publication "Österreichische Gemeinde-Zeitung" on European matters;
- Information was also available on the Internet homepage of the Austrian Association of Cities and Towns;
- Interested municipalities have been provided with separate information from the Brussels office;
- Material received from other local/regional associations has been distributed;
- Information published in "Agence Europe" has been distributed;
- New EC legislative documents have been discussed in committees and working groups of the Association of Cities and Towns.

2.5.7 Networking

Although the cooperation for the membership negotiation concentrates on the national government the LGAs have to broaden their network over the national borders. Today the LGAs of South East Europe are integrated in many international institutions and organisations. Compared to the situation of the Central and Eastern European Countries in the beginning of the 1990 the LGAs from South East Europe are networking very intensively. They also have learnt from the partner LGAs from Central and Eastern Europe how and with whom to intensify networking. Contacts to national LGAs from EU member countries, Members of the European Parliament and the Committee of Regions should in any cases be intensified.

2.5.7 Conclusion

Following these seven steps leads to an overall LGA strategy for EU membership negotiations. Based on the national situation additional steps may be useful. Nevertheless the core elements are the institutionalised European Integration Working Group with the national government and the screening of the national law to check if the local government regulations are in compliance with the EU acquis communautaire.

16) www.logon.eu.

Chapter 3 LISBON TREATY – A PROMISING TREATY FOR LOCAL AND REGIONAL GOVERNMENTS

LISBON TREATY – A PROMISING TREATY FOR LOCAL AND REGIONAL GOVERNMENTS

Simona Wolesa – Association of Austrian Cities and Towns, Permanent Representation of Austria to the European Union, Brussels

The Treaty of Lisbon (or Reform Treaty) will amend the EU's two core treaties, the Treaty on European Union (TEU) and the Treaty establishing the European Community (TEC). It will not constitute a third Treaty. The Lisbon Treaty replaces all references in the TEU and TEC to the "Community" or "European Community" with references to the "Union". In addition, several Protocols and Declarations are attached to the Treaty. The TEC will become the "Treaty on the Functioning of the European Union" (TFEU).

There is a clear division of material between the TEU-principles and objectives, provisions on the institutional framework, general provisions and the Common Foreign and Security Policy (CFSP) – and the TFEU, containing the details on how the Union is to function. The provisions of the two Treaties will have equal value and it should be noted that the Protocols will have the same legal status as the articles of the Treaties.

3.1 LOCAL IMPLICATIONS

The Reform Treaty will give rise to a complete overhaul of the existing legal perceptions between the European and the local/regional level. For the first time EU primary law will recognise the principle of local/regional self-government as part of the national identity of the Member States. The Treaty will extend the subsidiarity and proportionality control to the local/regional level and the Committee of the local and regional governments (COR) will be strengthened with the possibility to go to the European Court of Justice. The Treaty also foresees a procedure to minimize financial and administrative burdens of EU law and a consultation procedure for local/regional governments and their associations.

3.1.1 Recognition of the principle of local/regional self-government

In some Member States the principle of local/regional self-government is secured in their national constitutions. In EU law an obligation for Member States or EU institutions to respect the principle of local self-government has not existed to date and the Charta of Local Self-Government which was adopted by the Council of Europe some 25 years ago has up until now been irrelevant at EU level.

Article 4(TEU)

…

2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and

safeguarding national security. In particular, national security remains the sole responsibility of each Member State.

3.1.2 Subsidiarity and Proportionality Control

For the first time the Treaty foresees the extension of this control mechanism to the local/regional level. The Treaty refers to the sub-national level and it guarantees that the EU will not act where a task can be better achieved at the local/regional level.

Article 5(TEU)
1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.
3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.
The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.
4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.
The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

With the principle of subsidiarity the Treaty clarifies that "in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional/local level." Furthermore "Union action shall not exceed what is necessary to achieve the objectives of the Treaties" – the principle of proportionality. The application of both principles is described in detail in a Protocol to be annexed to the Treaties:

Protocol (No 2) on the application of the principles of subsidiarity and proportionality
…
Article 2
Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal.

Article 5
Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.

Article 8
The Court of Justice of the European Union shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article 263 of the Treaty on the Functioning of the European Union by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber thereof.

In accordance with the rules laid down in the said Article, the Committee of the Regions may also bring such actions against legislative acts for the adoption of which the Treaty on the Functioning of the European Union provides that it be consulted.
…

3.1.3 Services of General Interest

The Treaty recognises the essential role of local/regional government in procuring, organising and providing public services. It recognises the local/regional lead in public service provision and this will encourage better involvement of local/regional government representatives in framing new laws that affect local public services. The new article 14 also establishes legal competence for the EU to regulate the provision of services of general interest, their conditions and principles.

Article 14 (TEFU)
Without prejudice to Article 4 of the Treaty on European Union or to Articles 93, 106 and 107 of this Treaty, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Union and the Member States, each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Treaties, to provide, to commission and to fund such services.

The Treaty also emphasises the local/regional competence in this field in an additional protocol No 26 to be annexed to the Treaty:

Protocol (No 26) on the services of general interest
Article 1
The shared values of the Union in respect of services of general economic interest within the meaning of Article 14 of the Treaty on the Functioning of the European Union include in particular:

- *the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users;*
- *the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;*
- *a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.*

Article 2
The provisions of the Treaties do not affect in any way of the competence of Member States to provide, commission and organise non-economic services of general interest.

3.1.4 Social Market Economy (possible Correction of the Single Market Concept)

An interesting novelty is an addition referring to the so called “social market economy” in the section concerning the internal market. The Reform Treaty therefore strengthens the position of the local/regional provision of services of general interest within the scope of the internal market rules as this is also seen as part of a social market economy. The references to the development of “a highly competitive social market economy” and to promoting “social justice and protection” are likely to have some effect on the way in which other provisions of the Treaties are interpreted, not only by the European Court of Justice but also by the other EU institutions when undertaking their tasks.

…
Article 3(TEU)
3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

3.1.5 Consultation Rights

With a new article in the section on "participative democracy" the Treaty foresees more effective consultation of local/regional government (in addition to the Committee of Regions consultation rights), and their associations in all EU activities. EU institutions will be obliged to keep an open, transparent and continuous dialog with the representative associations and with civil society. This will enable local government to influence more effectively the course and content of new EU laws with implications on the local/regional level.

Article 11(TEU)
1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.

2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.
…

3.1.6 Committee of local and regional governments (COR) (Articles 305 to 307 TFEU)

This consultative Committee was established in 1994 to become the local and regional governments'official representative body within the EU. The Committee has been strengthened by gaining the power to go to the European Court of Justice if it believes that the subsidiarity and proportionality principle has been breached, or if its right to be consulted on relevant issues is not respected (see above in Protocol No 2).

3.1.7 Charta of Fundamental Rights

It was decided not to directly include the Charta in the new Treaty but rather to establish its legal validity with a single reference. The Charta is not valid in Poland and Great Britain as these two Member States decided for an opt-out. For the local/regional level it is interesting that the Charta already emphasise in its preamble that local/regional governments are part of the institutional organisation of a Member State and are therefore, part of the national identity of a Member State. There are a number of articles in the Charta which are of relevance for the local/regional level, i.e. the access of EU-citizens to services of general economic interest, the guarantee of an active and passive right to vote in local elections, or the right to good governance (administration) or proper access to documents.

Article 6 (TEU)
1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.
…

Rural areas and structural funds
The modified article affords greater importance to this issue at EU level.

Article 174/TFEU/TOFU)
In order to promote its overall harmonious development, the Union shall develop and pursue its actions leading to the strengthening of its eco-nomic, social and territorial cohesion.

In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions.

Among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions.

3.2 CONCLUSION

The EU reform debate raised the level of awareness and recognition of the local/regional level within the EU institutions. The Lissbon Treaty is therefore a major step forward for local/regional governments. It contains many articles which are of essential interest for the local/regional level and which have been demanded to be fulfilled for years. Provisions that are particularly valuable are the acknowledgment of local/regional government, the strengthening of the European subsidiarity and the emphasis in Protocol 23 on the competences of local/regional governments in providing public services. The local/regional government elements in the Lisbon Treaty could help to promote good governance in Europe, by helping to ensure EU actions are properly justified, limiting them to those areas which cannot be better managed at local/regional level and ensuring that EU actions are proportionate without imposing undue administrative or financial burdens on local/regional authorities.

It is foreseen to have the Treaty ratified and in force already for the European Parliaments elections in June 2009. Currently (August 2008) 20 Member States have ratified the Treaty.

Chapter 4 CITY COOPERATION AND TWINNING – CEMR FACILITATING THE INTEGRATION OF SOUTHEAST EUROPEAN LGAS

CITY COOPERATION AND TWINNING – CEMR FACILITATING THE INTEGRATION OF SOUTHEAST EUROPEAN LGAS

Sandra Ceciarini – Council of European Municipalities and Regions, Head of citizenship and international cooperation, Paris

The Council of European Municipalities and Regions (CEMR) is the largest organisation of local and regional government in Europe gathering 51 national associations of towns, municipalities and regions from 37 countries. CEMR's philosophy rests upon a multi-level European approach that recognizes the vital role of regional and local self-government, including the need for partnership between all spheres of government to tackle the major issues facing our citizens.

4.1 CEMR AND SOUTHEAST EUROPEAN LGAS

Created in the aftermath of the Second World War in 1951 by mayors seeking to maintain peace and enhance cooperation at local level, CEMR has developed and accompanied its members through all stages of the European construction process. Its goal has been to reinforce cooperation at local and regional levels to help local and regional authorities have access to and participate in the European construction.

Our Organisation has accompanied the strengthening of local democracy and EU membership of central and eastern Europe as well as the reconstruction of peace in the Balkans after the war by different processes:

4.1.1 Support the implementation of the acquis communautaire

After the fall of the Berlin wall in 1989, CEMR played an important role accompanying local and regional authorities of the central and eastern European candidate countries in preparation of their future membership in the European Union.

At the time of the 2004 enlargement process of the ten new member states, several initiatives were taken to help the entering countries meet the conditions set by the European Commission and translate the acquis communautaire into their internal policies at local and regional levels. For an example, the members of CEMR's Committee of women elected representatives of local and regional authorities placed particular importance on the need to establish contacts with their counterparts from central and eastern European countries and organised meetings and training seminars aimed at the women elected representatives of these countries.

Faithful to its belief that peace is at the heart of the development of new local democracies, CEMR continued working for the strengthening of local and regional government in the south east of Europe to ensure stable development, intensifying cooperation between associations of local and regional governments in the 25 member states and in south east European countries, and urging the EU institutions to guarantee specific support based on exchange

of experiences and know-how. Considering cooperation at the grassroots level as a key factor for success, CEMR relied very much on its strong twinning network to facilitate the process.

4.1.2 Support free and fair elections

The principle of free and democratic elections is part of CEMR core values and is enshrined in its statutes as a condition for membership. In this context, CEMR accompanied the strengthening of local democracy in southern and eastern Europe and supported the observatory role of the Congress of Local and Regional Authorities of the Council of Europe during local elections as well as the monitoring process that the Congress pursues.

CEMR today continues focusing on the south east region and work towards local democracy in the Balkans, in particular in relation to the EU integration process, which is the final aim of CEMR.

4.1.3 Support the creation of national associations

In addition to supporting local democracies, CEMR has also supported the emergence of structured national associations of local and regional authorities in south and east European countries, which are composed of democratically elected local and regional representatives. The creation of these associations was also a means for the new democracies to get closer to the European arena and take part in exchanges with local and regional representatives of the member states of the European Union. In this way the national associations contributed to pave the way for the candidate countries to prepare and start fulfilling the criteria of the *acquis communautaire.*

CEMR now counts national associations in almost all south-east European countries, including Romania, Serbia, Montenegro, former Yugoslav Republic of Macedonia and Albania. This year, it gained two new members also in the region – the two national associations of Bosnia and Herze-govina: the Association of Municipalities and Towns of Republic of Srpska and the Association of Municipalities and Cities of the Federation of Bosnia and Herzegovina.

The participation of the associations in the statutory and working meetings of CEMR with representatives of EU countries surely contributes to the process of helping bring local and regional authorities closer to the European Union scene.

4.1.4 Support other European networks of local democracy

CEMR contributed to the creation of the Local Government Network “Logon” in 1998, which was built upon an initiative of national associations of local authorities in Austria, Sweden and Finland. Its main aim was to help municipalities from candidate countries prepare for EU accession. The action consisted in the reinforcement of cooperation between the presidents and secretaries general of local authorities associations to intensify information and best practices exchanges and to create a foundation for mutual support in the context of negotiations at EU level.

Moreover, recently CEMR provided its support to the Association of Local Democracy Agencies (ALDA), which launched in 2004 a project for capacity building of local authorities and civil society in Southern and Eastern Europe. CEMR is a member of ALDA. Both organisations being concerned by the involvement of citizens in all decision making processes at local level, they naturally found a common interest in working together in the field of twinning.

Considering cooperation with southeast European LGAs as one of its priorities for 2008, CEMR undertook this year a process of mutual associate membership with the network of associations of local authorities in South Eastern Europe, NALAS. NALAS aims to promote the process of decentralisation in cooperation with central governments and international organisations, considering local self-government as a key issue in the current process of transition affecting the various countries in south-east Europe. This reinforced cooperation between the two associations will facilitate twinning links between south-east European countries and countries from other parts of Europe.

4.2 THE ROLE OF TWINNING AND THE EU PROGRAMME "EUROPE FOR CITIZENS"

Town twinning belongs to the founding aims and activities of the Council of European Municipalities and Regions (CEMR) which, since its creation in 1951, has promoted links of exchange and cooperation between towns and communities as a driving force in the growth and development of the European Union. By bringing citizens from different countries and cultures closer together, and by fostering cooperation between local elected representatives – the closest sphere of government to the citizens – the twinning movement is characterised by an originality and strength that are all its own. Twinning in Europe today has created a dense network of some seventeen thousand links between small, medium-sized and large towns and cities. Now, more than fifty years since the first steps were taken towards forging a true European Union, twinning remains a unique method for involving the citizens directly in this major undertaking. In a Europe which has expanded through a series of "enlargements", twinning can promote mutual awareness and dialogue, and thereby strengthen feelings of a common European identity and sense of belonging, and respect for the great diversity that this implies.

In these early years of the XXIst century, in a world that is constantly changing, CEMR is confident that twinning will continue to constitute an appropriate instrument with which current day issues can be tackled, and which can be responsive to our rapidly evolving environment. Since the end of the 1980's, the twinning movement has seen a massive increase with the opening up of the former communist States, which helped many partnerships to be created, particularly in Poland, the Czech Republic, Hungary and Romania, and with the setting up in 1989 of an EU programme specifically to support twinning between European local authorities. The programme, entitled "Europe for Citizens" since 2007, has facilitated the exchanges between citizens from different countries, as well as the organisation of related events, and greatly stimulated the European twinning movement. "Europe for Citizens" will celebrate its twentieth anniversary in 2009.

The EU Programme aims to address "European" citizens, including citizens of EU-Member States (as from 1st January 2007), citizens of other participating countries as well as legal residents in the participating countries.

As far as other participating countries are concerned, the programme addresses the candidate countries and countries from the Western Balkans, provided that certain legal and financial obligations are fulfilled. Croatia for example joined the Programme in November 2007. Certain other south-east European countries which are candidates for accession to the European Union could, in the future, participate in the Programme: the Former Yugoslav Republic of Macedonia (FYROM), countries from the Western Balkans such as Albania, Montenegro, Bosnia and Herzegovina, Serbia, including Kosovo under United Nations Security Council Resolution 1244 of 10th June 1999.

To be able to participate, partner countries outside the European Union must pay a financial contribution, the so-called "entry ticket". In this context CEMR supports local government associations of the countries concerned in obtaining that their government accept to participate in the EU budget by paying the entry ticket for twinnings. The issue of the eligibility of south-east European countries to the EU programme "Europe for Citizens" will be discussed on the occasion of a coming CEMR event, which is foreseen for the beginning of 2009.

In November 2008, CEMR is organising a major conference with the Austrian Association of Cities and Towns, and in partnership with NALAS, on *"South-East Europe – Meeting the Challenges"*, which will bring together some 100 leading local government elected representatives and experts from south-east and other parts of Europe. The conference will both focus on key challenges for local government in the region of south-east Europe (including finances, urban development and energy) and on the future for south-east Europe from a broader European perspective, including issues such as preparing EU membership and the development of co-operation and twinning. The session on twinning and cooperation will aim to address the following issues: the promotion of these lasting and direct citizens' partnerships to benefit cooperation and mutual awareness (reflecting all citizens' diversity cultures), the support of possibilities for south-east Europe under European Union programming, and twinning's particular role in relation to countries that are potential candidates for accession to the Union. Examples of city-to-city and association-to-association cooperation will be brought forward as illustrations.

Now, more than fifty years since the first steps were taken towards forging a true European Union, twinning remains a unique method for involving the citizens directly in this major undertaking. In a Europe which has expanded through a series of "enlargements", this great movement of twinned towns can promote mutual awareness and dialogue, and thereby strengthen feelings of a common European identity and sense of belonging, and respect for the great diversity that this implies.

CEMR wishes to underline the continuing relevance of twinning today as a force for peace, inclusion and understanding between European citizens from different countries and backgrounds. We welcome the European Commission's proposals for a new seven year

programme for active European citizenship which would continue to give an important role to twinning in tomorrow's world that emphasises the affirmation of citizenship as a fundamental element of democracy. We believe that twinning partnerships also need to be encouraged and supported with our counterparts in Europe's neighbouring countries as a dynamic force that help to diminish local and regional inequalities.

This message was clearly transmitted by the nearly 500 participants of the last Twinning Congress that CEMR organised, in May 2007, with the support of the European Commission, in Rhodes, on "Twinning for Tomorrow's World".

This is indeed the great commitment of the new chair of CEMR twinning network, Mr Janusz Marszalek, who as Mayor of the city of Oswiecim places particular importance on the need for peace as a first condition for citizens' exchanges.

CEMR launches in November 2008 the new website for Twinnings which we hope will serve as a real tool for European citizens to come together. For this we warmly encourage you to visit this site at: **www.twinnings.org.**

Chapter 5 BUDGET NEGOTIATIONS WITH CENTRAL GOVERNMENT

BUDGET NEGOTIATIONS WITH CENTRAL GOVERNMENT

Ginka Tchavdarova – National Association of the Municipalities in the Republic of Bulgaria, Sofia

The procedural rules of budget negotiating between the National Association of Municipalities in the Republic of Bulgaria and the Ministry of Finance are an extremely significant tool in achieving objectives and protection of municipal interest in the course of drafting the annual state budget act and draft municipal budgets.

The outcome of such negotiations is the criterion to measure the ability of the Association to support their members and the willingness of the government to listen to what municipalities have to say.

Conducting annual budget negotiations is a well-established practice that has been implemented in the past several years in Bulgaria. Key to it is the favorable legislative framework that has been coined after the active lobbying effort of the Association.

The most important elements of this framework are:
- The Local Self-government and Local Administration Act – according to this the Association has the right to negotiate with the Ministry of Finance on the behalf of the municipalities;
- The Municipal Budget Act – here are included the procedures and the principles for conducting budget negotiations.

As a proof for the more efficient cooperation between NAMRB and the Ministry of Finance are the procedural rules and the signed Three-year program for efficient interaction, which have been approved from both sides.

5.1 STRUCTURE OF PROCEDURAL RULES AND EXCHANGE OF INFORMATION

5.1.1 Principles of negotiating

- Mutual trust and respect;
- Equality;
- Transparency and publicity;
- Making commitments that correspond to the powers and actual capacity of central and local authorities;
- Disbursement of funds from the state budget to the municipalities should be exercised under efficient and transparent mechanisms.

5.1.2 Subject of negotiations

- Municipal draft budget at national level. Total revenues, allocation by type and by municipalities. Total expenditure, allocation of expenses by type and by municipalities;
- Distribution of responsibilities of public services funding between the state and the municipalities;
- State transfers to municipalities – amounts, criteria and mechanisms for allocation of funds among municipalities;
- Powers of local authorities to manage intergovernmental transfers;
- Provision of financing to back up legally delegated responsibilities to municipalities;
- Regulations specific to municipalities during the budget year;
- Other issues to be defined by mutual agreement, for example, growth of local taxes.

5.1.3 Information for negotiation purposes

The Ministry of Finances provides:

- Updated three-year forecast and macroeconomic framework;
- Legislative acts (or drafts thereof), introducing changes to the revenue and expense items of municipal budgets;
- Budget instructions to municipalities as to how budgets should be constituted;
- Information on the amounts of state transfers;
- The allocation mechanism to municipalities.

The National association of municipalities provides:

- Substantiated proposal on the total amount of financial relations between municipal budgets and the government budget;
- Opinion and proposals to the state budget draft bill;
- Analysis and issues related to the financial status of municipalities;
- Proposals to streamline the mechanisms of state budget transfers and disbursements;
- Conclusions of the current execution of municipal budgets.

5.2 CONDUCTION OF BUDGET NEGOTIATIONS

The negotiations are carried out on two levels: at expert and at political levels. Expert level negotiations should precede political negotiations and should be used to prepare a common position and draft solutions to be finalized at the political level meetings.

Representatives to participate at both levels are to be assigned by the Minister of Finance and the Board of Directors of the Association.

The expert team of the Association comprises experts of recognition from municipalities, administrative staff of the Association and independent local finances experts from partnering organizations. Simultaneously with approving members of the negotiation team, the Board of Directors of the Association sets up objectives, tasks and the framework to be followed by

the expert team members while negotiating with representatives of the central government (the Ministry of Finance and other governmental agencies).

5.2.1 Negotiations at expert level

Following the annual close of accounts for the previous budget year, the Association draws and disseminates among municipalities an Analysis on municipal budget execution. Findings and conclusions are established based on the factual content of municipal report on individual municipal budget execution. Recommendations are formulated and possibilities for changes in the forthcoming budget year are outlined. Data contained in the analysis should be used to point out deficiencies and outline general trends in municipal financial status as a whole and by groups of municipalities. Thus their attention should be drawn to existing reserves and to be utilized and to assist them in formulating opinions and proposals to be used in drafting budgets for the coming budget year. It is advisable that the draft analysis is subjected to discussion at large-scale municipal meetings and conferences;

Separate working groups of experts of the Association are designed: those that negotiate at expert level with the Ministry of Finance and those negotiating with other governmental agencies. Their activity is assisted and monitored by members of the Board of Directors as designated by the BoD or mayors that are professionally trained and have the expertise to deal in the respective area of negotiations. At expert level, the negotiations are carried out basing on a common position, adopted by the Association's Board of Directors;

The groups of experts agree with the respective ministries on the required information exchange and schedules of working meetings at expert level. The tasks of such expert group are considered complete with the signing of bilateral protocols describing agreements reached, differences and proposals. Based on such protocols, the respective Minister drafts and submits a report to the Finance Minister on results achieved in the expert negotiations accompanied by draft decisions;

From time to time the expert team of the Association advises the Board of Directors, the specialized committees of the Association and the municipalities on the current status of negotiations in an appropriate form;

Based on municipal proposals and negotiation outcomes with the respective ministries, the team of experts prepares a draft common position on all existing issues and submits it for adoption with the Board of Directors along with a plan of measures;

At the completion of the budgetary procedure a working group of financial experts of the Association starts preparing and sends to the municipalities following the promulgation of the governmental budget act a Consultative paper aimed at assisting municipal councilors, mayors and municipal financial officers to draft and adopt municipal budgets for the coming financial year. The Paper focuses on new developments in the regulatory environment; provides practical advice and instructions on budget drafting. The Consultative paper is of advisory nature. Every municipality independently prepare their own budget, choose and further

develop relevant recommendations and apply them according to their individual objectives, specifics, municipal agendas and priorities;

The Association organizes training seminars for municipal financial officers jointly with the Ministry of Finance on preparation of draft municipal budgets.

5.2.2 Negotiations at political level

The Board of Directors reviews the results from the work at the expert level and adopt a common position of the Association on the draft budget in its items related to municipalities;

In the course of the budgetary procedure, the representatives of the two negotiating parties hold several meetings at political level. At the initial meeting, the minister of finance makes a presentation on the major policies and priorities of the government for the forthcoming budget year and the macro indices of the state budget and in particular, the municipal budgets. At the close of the budgetary procedure one or several meetings are held where the two parties shall present their positions, justify their proposals, reach agreements on some of issues discussed or state differences;

The budgetary negotiations of the Associations are finalized with the execution of a Memorandum (Protocol) listing agreements and/or disagreements.

It is advisable that proactive contacts with the central legislative powers are sought for preliminary discussions of cooperation proposals aimed at solving key issues of local governance that need to be resolved in the course of the forthcoming budget year.

Based on the experience of the NAMRB we annually conduct a Dialogue Day between the legislative and municipal authorities. This event is held by regions and involves the participation of MPs, municipal councilors, mayors, governors, NGOs, the mass media and citizens. At such meetings the Association informs the MPs of the most urgent issues, of commitments municipal authorities are willing to undertake and the support expected from MPs. In the course of the meetings the Association seeks the assistance of the MPs to support the common position and municipal proposals on the budget relations during the forthcoming year.

The negotiations are a permanent process, where in each separate stage different partners are involved. It's important in this case to use the political influence of the municipalities, i.e. to exert organized pressure by municipal councilors on their political parties in order to achieve the desired by all municipalities result.

5.3 MEMORANDUM (PROTOCOL) ON DISAGREEMENTS

At the beginning of the Protocol the principles that outline the common efforts of the central government and the local authorities are defined.

The negotiations end with bilateral signing of the Protocol on disagreements.

Based on the negotiating experience of the NAMRB with Ministry of Finance, we recommend that a Memorandum (Protocol) is signed to describe disagreements, rather than agreements reached on the draft governmental budget act.
A basic part of the negotiations is a precise definition of the most essential differences in the approaches and proposals of negotiating parties on the subject matter of relations between the state budget and the municipal budgets.

The Memorandum on disagreements in negotiations comprises of substantiated objections against:

- Types and amounts of intergovernmental transfers to the municipalities;
- Distribution of financial responsibilities between the central and the local government as regards public services provision;
- The mechanism and criteria of transfer allocation among municipalities;
- The relation between legally delegated responsibilities to local governance and their financial resources;
- Conditions to expand the range and improve the quality of services provided to the public by the municipalities;
- Limiting the powers of local governance authorities to actually determine local revenues and expenses and independently manage intergovernmental transfers, in accordance with local specifics and local public interest;
- Provision of resources to back up measures included in Strategies, Programs and other legal acts for local governance development.

The Memorandum on disagreements signed by the Ministry of Finance and the President of the Association becomes constituent part of the documents on budget negotiations and submitted to the Council of Ministers and to the Parliament. This allows MPs to have a correct idea of existing differences, work out their own opinions, positions and proposals on existing issues and submit them for debates at the hearings of parliamentary commissions and in plenary meetings.

Clear definitions of the positions of the Association on existing differences at this stage of the budget procedure enhance their opportunity to seek the assistance of the parliamentary lobby, the public and the media for their resolution. This is extremely important in the process of seeking and finding solutions within the mandatory balance between independent exercise of local choice and the financial stability at national level.

To facilitate their work, the Association prepares and provides all MPs with specific financial data to support financial forecasts on proposed measures and solutions.

Municipal demands as reflected in the Memorandum on Disagreement are presented, substantiated and defended at debates of the Parliamentary commissions by representatives of the Association designated to represent the Association at political level. When necessary, the Association requests and agrees on meetings with the parliamentary groups of political parties elected to the Parliament.

5.4 NALAS TASK FORCE ON FISCAL DECENTRALIZATION

Presidents and executives of NALAS Member Associations defined the importance of the role of Local Government Associations in negotiating for better fiscal policies with their central government authorities. They endorsed the draft municipal negotiations, which is the first product of the NALAS Task Force on Fiscal Decentralization led by the National Association of the Municipalities in the Republic of Bulgaria (NAMRB).

In the frame of the work of the NALAS Task Force on Fiscal Decentralization, NAMRB presented its experience in the process of negotiations between the National Associations and the central governments.

Important tools for successful negotiations are permanent procedural rules, based on clearly defined principles, are approved and adopted; opportunities have to be sought after to define the powers of the association to participate in budget negotiations pursuant to permanent legislative acts; precise designation of participants in bilateral talks; ensuring of all relevant information and time schedules of budget negotiations. The Association will certainly benefit if assistance from independent experts is sought after and obtained (experts that are not directly involved in municipal work or with the central executive power), from international organizations and NGOs when drafting proposals for legal amendments, monitoring reports on results, training of staff, etc.

It is equally important that the Association establishes and adheres to a practice where common position is established following previous discussions, seeking of consensus to overcome conflicting interest between municipalities of diverse scales. It is important that the entire process involves the participation of a wide range of experts and elected representatives of local governance, efficient interaction with ministries and governmental offices is maintained and the indispensable assistance of the parliamentary lobby and representatives of civil society is sought.

During the preparation and conduct of the negotiations, it is important that recommendations of the Council of Europe or final documents of the Committee of the Regions are used as additional arguments for municipal propositions.

Ever so often the practice of budget negotiations suffers from certain deficiencies related to:

- the criteria applied to determine the pattern of state transfer distribution among municipalities are presented rather vaguely and are lacking in transparency;
- insufficient time to discuss existing issues and define adequate measures to solve them;

- the Ministry of Finance proposes solutions to a specific problem without discussing these within the framework of other measures and probable consequences;
- the regulatory framework on municipal finances is frequently changed or amended;
- the financial data base of the Association is out of date or is incomplete;
- lack of means for information exchange.

During the working process were outlined several conclusions:

- Successful budget negotiations with the Ministry of Finance are the key component in the overall dialogue between the National Association and the authorities of the central executive and legislative power on local governance development, and for the standing of the association vis-à-vis its members;
- It is necessary that the regulations and acts on local governance and local budget legislation bring about and establish durable legal provisions on the powers of the National Association to participate in budget-related negotiations;
- Further detailed regulation of relationship with the Council of Ministers and the Ministry of Finance may be done by executing separate agreements;
- The principles of the European Charter on Local Governance should become an inseparable part of the legislative framework and practices.

It is important to underline some recommendations on the activities to each Association to ensure effective negotiations:

A strong National association of Municipalities should:

- Enter into a dialogue, rather than fights with the central executive and legislative authorities;
- Embody in an agreement, adopted procedure, legal act or other document any victory or positive change gained within the negotiation process;
- Be part of the process of preparing quality analysis, forecasts, consultative papers;
- Build their own financial data base and have access to the national data base of the Ministry of Finance;
- Seek and find their own lobby within each ministry, governmental agency and the Parliament;
- Win the support of the mass media, NGOs and the public;
- Learn to accept minor defeats in the name of the final victory;
- Research and apply the best international practices.

The Association should not:

- Permit that municipalities disagree and contradict each other;
- Negotiate allocation mechanisms only when total amount of transfers are not subject of negotiations;
- Nurture populist, unrealistic proposals;
- Forget to show their appreciation to every single person that showed support to their proposals.

To be relevant with the municipal needs and to emerge useful good practices, NAMRB in partnership and cooperation of the members of NALAS Task Force on Fiscal Decentralization elaborated the following products:

- An example structure of procedural rules for conducting negotiations;
- Memorandum (Protocol) on agreements and disagreements;
- An example of legislative regulations.

These products are already discussed by the presidents and executive directors of the NALAS member Associations and are put into their practice.

The most important benefit of the negotiations between the representatives of the Central Government and the National Associations are the real changes, which occur for the municipalities and the services they submit to their citizens.

Chapter 6 SERVICES OF GENERAL INTEREST IN THE SERVICES DIRECTIVE

SERVICES OF GENERAL INTEREST IN THE SERVICES DIRECTIVE

Ines Breiner, Karin Mathé – Municipal Department 27 – EU-Strategy and Economic Development, Vienna

6.1 INTRODUCTION

After three years of contradictory discussion and extensive negotiations the "directive on services in the internal market (2006/123/EC)" was adopted on 12th December 2006 by the European Parliament and the Council. The directive aims to create a free market for the service sector. Its purpose is to remove legal and administrative trade barriers and to encourage crossborder competition.

Now there is only a bit more than one year left to implement the directive into national law. This implies great effort for the Member States because the text is vague and wide applicable. It is ambiguous why the Commission has chosen this horizontal approach in the service sector, including Services of General Interest (SGI):

6.1.1 Historical overview

Since the 1980s the European Community – later the European Union – has strongly pushed the process of liberalisation of SGI. In the beginning the Commission has favoured a sectoral approach and started to review the different sectors of SGI in consideration of their competitive capability. In the meantime some universal services, such as air transport, telecommunications, postal services and energy, have been the target of Community liberalisation measures.

In its White Paper on Services of General Interest (COM(2004) 374 final) the Commission stated: *"For the time being, the Commission will, as a general rule, pursue and develop its sectoral approach by proposing, where necessary and appropriate, sector-specific rules that allow account to be taken of the specific requirements and situations in each sector. However, without prejudice to existing sector-specific Community rules, a horizontal approach will be considered with regard to a number of specific issues, such as consumers' interests, the monitoring and evaluation of services of general interest, the application of state aid rules to financial compensation or the use of structural funds for the support of SGI."*

From the Commission's point of view the sectoral approach was too inefficient in its progress. Therefore the Commission introduced a proposal for a horizontal directive (the so called "Bolkestein directive" named after the former European Commissioner for the Internal Market), which covered nearly all services.

6.1.2 Lobbying in the law making process

In January 2004 the European Commission launched a draft directive on services in the internal market. The objective of the directive was to achieve a genuine internal market in services – similar to the single market for goods – by removing legal and administrative barriers. Nearly all services – including SGI – fell under the scope of the proposal.

The draft met with widespread rejection from many Member States – especially from Germany and France – cities, municipalities and stakeholders all over Europe. Critics argued against two key points of the directive:

1. The proposal applied the same rules to SGI including social and health services as to plumbers and hairdressers.
2. The core element was the so called "country of origin principle". This means that service providers offering their services in another member state shall be able to operate according to the rules of their home countries.

Vienna and the other Austrian "Länder" adopted two uniform statements[1], in which they called for a general exclusion of all SGI from the scope of the directive. The "Länder" stressed their right of self-government and pointed out that there should be no room for a compulsory competitive tendering in the field of Services of General Interest. Their view was supported by the Austrian Chamber of Labour and the Austrian Trade Union. On the other hand the new Member States like Poland, the Czech Republic and Hungary called for a Services Directive leading to a completion of the internal market. At the end it was difficult to find a balance between these controversial interests. Therefore the final text of the directive, adopted in December 2006, presents a compromise.

6.2 LEGAL FRAMEWORK

6.2.1 Scope of the directive

The Services Directive concerns both the freedom of establishment and the freedom to provide services. The distinction between establishment and cross-border service is important to determine which rules of the directive concern the service providers[2].

Article 2 of the Services Directive defines the concrete field of application. Generally speaking the Services Directive applies to all services which are not explicitly excluded from its scope. Thus, it covers any economic activity which is usually provided for remuneration, as referred to in Article 50 of the EC Treaty[3].

1) The first on the 30 June 2004 and the second on the 19 October 2005.
2) See point 6.2.4.
3) Article 50 EC treaty: "Services shall be considered to be 'services' within the meaning of this Treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons …".

Article 2 comprises an exhaustive list of services that are excluded from the scope of the directive. The following SGI do not fall into the directive:

- Non-economic Services of General Interest
- Healthcare services[4]
- A part of the social services[5]
- Services in the field of transport

On the other hand Services of General Economic Interest are covered by the directive.

6.2.2 Economic/Non-economic Services of General Interest

The directive divides the Services of General Interest into economic and non-economic services. As above mentioned the Services of non-Economic Interest (SGI) do not fall under the Services Directive whilst the Services of General Economic Interest (SGEI) are within its scope. But the distinction between SGI and SGEI is difficult to make as there is a lack of specific national or European definitions. Therefore the classification is subject to the interpretation by the European Court of Justice (ECJ) on a case-by-case basis.

Following the judgement of the ECJ almost all services have an economic character[6]. The mere fact that an activity is provided by the state, by a state body or by a non-profit organisation does not qualify a service as non-economic per se. It is also not relevant whether the remuneration is given by the recipient of the service or by a third party. Hence, only the main tasks of a state are assumed to be non-economic, i.e. for example police, military forces and education. Therefore it is important for the regions and the local authorities to recognise that all services offered against remuneration[7] are considered to be economic and thus within the scope of the Services Directive.

6.2.3 Definitional Sovereignty

Article 1 paragraph 3 points out that the Member States are entitled to define SGEI[8]. This competence is restricted to diverse conditions set down in recital 70 of the Services Directive and in the handbook on implementation[9] published by the Commission:

4) "whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organised and financed at national level or whether they are public or private".
5) Article 2 paragraph 2 lit. j Services Directive: "social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the state, by providers mandated by the state or by charities recognised as such by the state."
6) C-451/03, Servizi Ausiliari Dottori Commercialisti.
7) Except for those which are not covered by the directive.
8) Article 1 paragraph 3 Services Directive: This Directive does not affect the freedom of Member States to define, in conformity with Community law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules, and what specific obligations they should be subject to.
9) Handbook on implementation of the Services Directive 2007 published by the Commission, which wants to give the Member States technical assistance in the implementation of the Services Directive. The document is not binding.

- It has to be a service of general public interest
- The entrustment of the service provider has to be laid down in a legally binding act
- The service entrusted needs to be clearly defined
- The assignment has to be in line with the community law

Article 1 states as well, that the Services Directive does not deal with the liberalisation of SGEI, nor with the privatisation of public entities and the abolition of monopolies providing services.

Why is it important to qualify services as SGEI? This issue is relevant to the regional and local authorities for two reasons:
- SGEI (e.g. public waste disposal systems or water supply) can be furthermore provided by public authorities.
- According to article 17 the freedom to provide services does not apply to SGEI[10].

6.2.4 Freedom to provide services (Article 16)[11]

The Services Directive distinguishes between the rules applicable to the establishment of service providers[12] and those dealing with cross-border providers[13].

Cross-border services
Cross-border providers are free to offer services in a member state other "than that in which they are established"[14]. They are only subject to their "home-country" legislation. Exemptions of this principle have to be justified by four reasons enumerated in Article 16:
- public policy
- public security
- public health
- protection of the environment

In the above mentioned four cases the receiving Member States have the right to impose their national legislation on the service provider granted that the requirements are non-discriminatory, necessary and proportional.

Article 17 states an exemption clause for Services of General Economic Interest (SGEI) like water distribution and supply services or treatment of waste. The list of SGEI in Article 17 is not exhaustive. The reference to these services does not mean that all such services are automatically to be considered as SGEI. Services may only be regarded as a SGEI if the conditions in Recital 70 are fulfilled.[15]

10) See point 6.2.4.
11) Former „country of origin principle".
12) Articles 9 to 15 Services Directive.
13) Articles 16 to 21 Services Directive.
14) Article 16 paragraph 1 Services Directive.
15) Handbook on implementation of the Services Directive 2007, p. 41.

Both the directive and the handbook do not say anything about the consequences of Article 17. An interpretation suggests that in the field of SGEI the service provider is completely bound by the legislation of the receiving Member State.

Providers established in other Member States
In these cases providers are subject to the legislation of the receiving Member State.

6.3 IMPLEMENTATION OF THE SERVICES DIRECTIVE

The Services Directive determines that Member States "shall bring into force their national legislation by 28th December 2009" (Article 44 paragraph 1).

The implementation of the Services Directive makes great effort as nearly all provisions are subject to the assessment, even those of the local level. Because of the federal structure of Austria, the Federal State and the "Länder" need to coordinate the proceedings of implementation. As a result of numerous meetings Austria will have horizontal framework legislation by the State and additionally legal provisions by the "Länder".
The following issues were and are subject to diverse meetings between the Member States and the European Commission.

6.3.1 Review of national legislation

Due to article 39 of the Services Directive the Member States have to screen their provisions in case that service providers are restricted by national law. First of all the Member States have to distinguish between cross-border services and services offered by providers established in a receiving state.

- Requirements to cross-border service providers are only accepted under the provisions of Article 16 (i.e. public policy, public security, public health, protection of the environment).
- Concerning the freedom of establishment restrictions can be justified by an "overriding reason relating to the public interest". According to the jurisdiction of the European Court of Justice the term "public interest" comprises not only the four justifications mentioned in Article 16 but also the following grounds[16]: protection of consumers, fairness of trade transactions, combating fraud etc.

Hence, requirements for service providers can only be based on the above mentioned arguments. In addition, any such requirement has to comply with the principles of non-discrimination, necessity and proportionality.

Conclusions of the examination by the Member States have to be reported to the European Commission by 28th December 2009.

16) See the definition of "overriding reason relating to the public interest" in article 4 para. 8 of the directive.

6.3.2 Points of single contact

The directive demands from the Member States to establish "points of single contact" for service providers by the end of 2009 (Article 6). These points shall enable service providers to complete all procedures and formalities from their "home-countries" by electronic means. Service providers – also natives – have to obtain all appropriate information, forms and documents relevant to the procedures, to submit documents and applications and to receive the decisions and other replies relating to their application through them[17]. But points of single contact do not prejudice the competences of national authorities.

Member States are free to decide both, the attribution of "point of single contact" and the organisational structure. That could be authorities, professional chambers but also private operators. In Austria the "Länder" decided to establish points of single contact in each "Land" (regional level).

6.3.3 Electronic procedures

Article 8 establishes the obligation for Member States to ensure electronic procedures for all proceedings and formalities to access and exercise services. Electronic communication should be possible to the "points of single contact", and also for direct transactions to the competent authorities[18].

In practice problems may not only occur in the compatibility of different electronic systems but also in the obligation to data security. These topics are still subject matter of meetings between the Member States and the European Commission.

6.3.4 Administrative cooperation

Member States are required to put in place the necessary legal and administrative arrangements to ensure proper cooperation between the competent authorities of different countries. In order to work accurately, "administrative cooperation needs to be supported by technical means which enable direct and fast communication between the competent authorities of different Member States. For this reason, the Commission has entered into the obligation to establish, in cooperation with the Member States, an electronic system for the exchange of information between Member States"[19]. This system is called "IMI" which stands for Internal Market Information System.

17) Handbook on implementation of the Services Directive 2007, p. 20.
18) As the handbook on the implementation of the Services Directive points out, "electronic procedures have to be available not only for service providers resident or established in the member state of the administration but also for service providers resident or established in other Member States", p. 22.
19) Handbook on the implementation of the Services Directive, p. 53.

6.4 CONCLUSIONS

Summing up: The Services Directive does not contribute to more legal certainty in the field of SGI for the following reasons:

- SGI are not generally excluded from the scope of the directive. Once more it is up to the European Court of Justice to distinguish between economic and non-economic services and between social and health services, respectively.
- The European Commission keeps pursuing and developing its sectoral approach by proposing sector-specific initiatives[20]: In July 2008 the Commission presented a proposal for a directive on patients' rights in cross-border healthcare[21].

What does this mean for regions and local authorities?

- Public authorities have to take the necessary legal measures in order to guarantee that SGEI can be provided on local and regional level in the future[22].
- Member States have to keep in mind that the screening process has to be finished by the end of 2009[23].
- Against the background of new sector-specific initiatives, municipalities and regions have to communicate their own concerns through lobbying activities in Brussels to influence the decision making process as early as possible. From experience lobbying is most effective if common positions are presented by networks (e.g. Eurocities, CEMR) and by cooperations of local and regional authorities.

20) The Commission presented on 20 November 2007 a communication on the SGI including social services. This document shows the intention of the EU to push the sectoral liberalisation process.
21) COM(2008) 414 final, 2 July 2008.
22) See point 6.2.2. and 6.2.3.
23) See point 6.3.

Chapter 7 INTERNAL MARKET AND PUBLIC PROCUREMENT

INTERNAL MARKET AND PUBLIC PROCUREMENT

Johannes Schmid – Association of Austrian Cities and Towns, Vienna

7.1 LEGISLATIVE FRAMEWORK

7.1.1 Directives

"Public Procurement" is the term used to describe the purchasing of works, supplies and services by national, regional and local public bodies, including central government, local authorities, fire and police authorities, defence, health services, joint consortia of public bodies, and public and private utilities. For local authorities, these rules regulate the way in which works, goods and services are purchased.

In order to ensure transparency and fair competition within the European common market, the European Union (EU) has – amongst others – set up directives on public procurement. These directives are in addition to the local authorities own requirements and national rules. It is the responsibility of the Member States to transfer these rules into national law while obeying certain fundamental principles laid down in the Treaty as well as the jurisdiction of the European Court of Justice that constantly further develops the EU procurement law. Due to this transposition of EU-directives into national law, the national procurement rules may vary between the Member States.

Essentially, in Austria the community Directives on public procurement are transposed in the Bundesvergabegesetz 2006 (BVergG 2006) the Federal Law on Public Procurement. A corresponding reference listing the Directives is stated in paragraph 192 of the BvergG 2006. Furthermore, due to the federal system laid down in the Austrian Federal Constitution Law there are nine additional different Landesvergabekontrollgesetze (''Länder''-laws on the control of public procurement) establishing a remedy system in accordance with the Directives 89/665 und 92/13.

It has to be mentioned that the BVergG 2006 as well as the Landesvergabekontrollgesetze also govern the field of procurement procedures below the thresholds of the Directives.

7.1.2 General principles

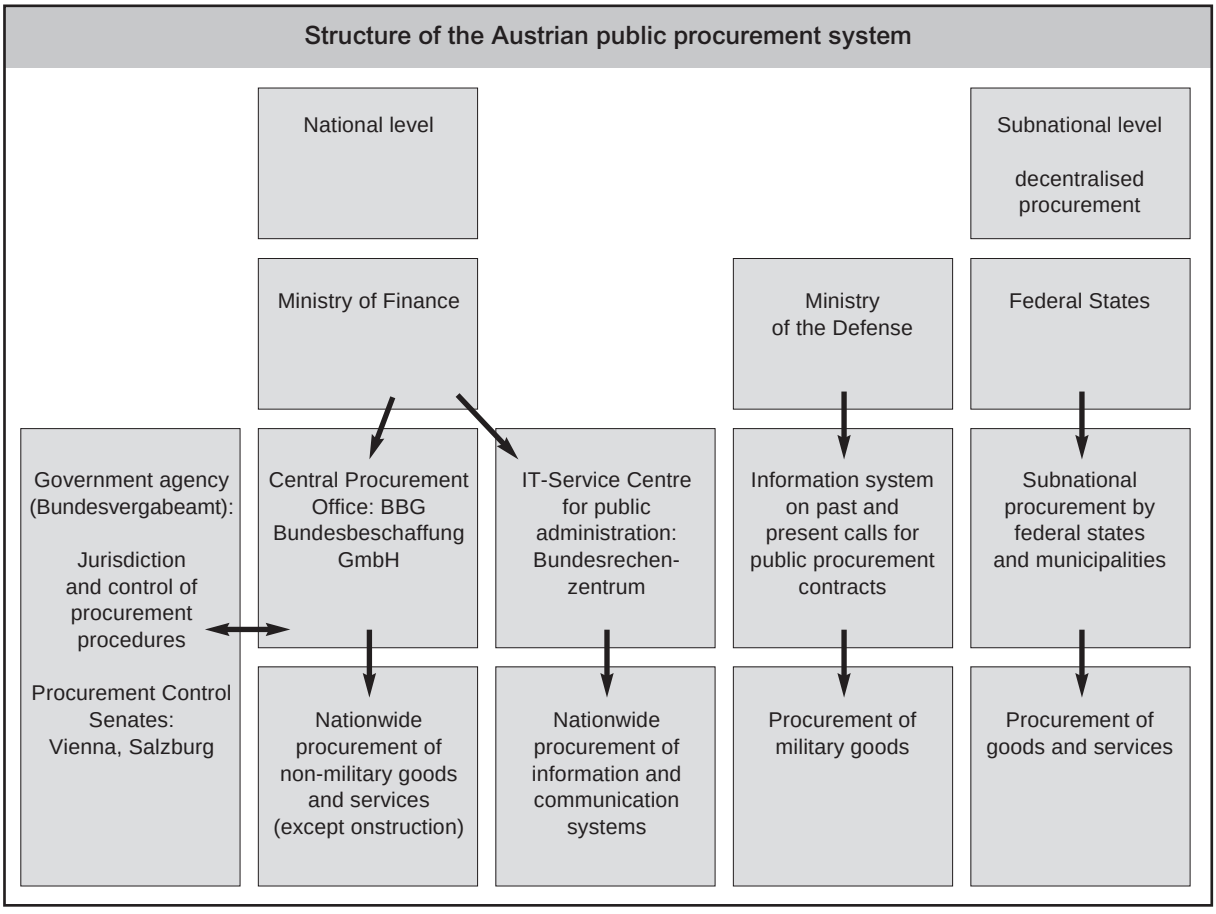
The general principles of public procurement in Austria were formulated in accordance with the EC Treaty, the Federal Constitution and the Directives. Paragraph 19 contains the main set of principles, which guide any procurement procedure within the scope of application of the BvergG 2006, i.e. non-discrimination, the four freedoms of the ECT, transparency, competition, equal treatment etc. Direct contracting is possible up to an amount of 40.000 Euro (exclusive of VAT).

7.1.3 Legislation currently in force

As already mentioned, the BvergG 2006 provides the most important legal frame for public procurement. The Austrian regions have nine different “Länder" laws on the control of public proccurement.

7.1.4 Institutional framework

As the definition of a contracting authority which falls within the scope of application of the BVergG 2006 mainly refers to the respective definition of the Directives, the BVergG 2006 covers the procurement of the regional and local authorities, i.e. the federal government and its subdivisions (Bund), the regional authorities (Länder), the municipalities (Gemeinden) and associations, as well as the procurement of certain utilities and bodies governed by public law within the same meaning of the Directives of the EU (paragraph 7 and 8 BVergG 2006). The following graphic illustrates the structure of the Austrian public procurement system:



The number of entities that are covered by the definition of a ‘‘body governed by public law’’ has hugely increased during the past ten years due to liberalisation and privatisation of the public sector. This development led to the founding of companies based on private law that are 100 percent or respectively by majority state owned, performing tasks in the general interest.

Basically, the above- mentioned contracting authorities are responsible for all procurement procedures that fall within their respective competences, meaning they have to carry out any procurement (work, service, supply) necessary to fulfil their legal tasks.

However, on the federal level due to budgetary restraints and to optimize public procurement procedures a central purchasing body (the so called Bundesbeschaffung-GmbH – BBG) has been established in 2001 (s. BGBI. I Nr. 39/2001). It is a limited company to handle the procurement of services and supplies for the federal state and its companies. Also local authorities are allowed to make use of the BBG if they want to.

The regional authorities (Länder) carry out most of their procurements through the administrative organization of the regional governments. The municipalities often set up associations for different purposes in the general interest (e.g. waste management). There is the attempt to organize central procurement offices for each of the 9 regional countries.

Among a large number of self-governed bodies, the social security institutions and professional chambers form a large group of contracting authorities.

7.1.5 Duties

The duties of the above-mentioned contracting authorities are for the most part defined in specific laws describing their respective tasks, comprising the necessary competences for the fulfilment of these tasks. They range from usual public administration and social security administration to real estate management (e.g. the Federal Property Agency, BIG) or dispute settlement in the broadcasting sector (e.g. the Regulatory Authority for Telecommunications and Broadcasting, RTR-GmbH).

The duties of the local authorities are defined in nine different so called “Gemeindeordnungen” (municipal codes – “Länder” laws, defining the rights and duties of the local authorities in one specific federal state) and also in several specific laws.

7.1.6 Bodies responsible for appeals (legal nature and composition)

The BVergG and the Landesvergabekontrollgesetze provide for single formal review systems run by independent special administrative tribunals meeting the requirements of the EC remedy Directives and Article 6 of the ECHR. Due to the Austrian federal system there are ten different review bodies:

- the Bundesvergabeamt (Federal Procurement Authority, BVA) for procurements on the federal level,

- the autonomous administrative tribunals in seven regions (so called UVS) and
- procurement control senates in two regions (Vienna and Salzburg) for procurements on the respective regional and municipal level.

Although there are ten different review bodies the review procedures basically do not differ too much. The legal practice of the Länder, following an administrative necessity, shows a tendency to harmonize the regulations on procurement review with the provisions of the BVergG 2006. The following description is therefore limited to the basic regulations of the BVergG 2006.

As mentioned before, the BVA is the competent review body for procurements on the federal level. It forms part of the judicial review system as laid down in the Federal Constitution. It is composed of independent administrative judges and laymen who are nominated on equal terms for a certain time period by the contracting authorities and the contractors' side. The BVA's decisions are generally rendered in senates consisting of one administrative judge and two laymen. The BVA has the legal powers as required by the Directives (annul decisions of contracting authorities, interim measures a.s.o.). According to the BVergG 2006 the BVA is competent for the legal protection of bidders in the precontractual phase (i.e. the time before the actual contract has been awarded) of a procurement procedure and should decide within two months. After a contract has been awarded the BVA's competence is restricted to statements about the conformity or nonconformity of a procurement procedure of a contracting authority. This statement constitutes an essential requirement and therefore the basis for damage claims before the civil courts. The BVA's decisions are published on the Internet (see http://www.bva.gv.at) and can be challenged before the Supreme Administrative Court (Verwaltungsgerichtshof – VwGH) and the Constitutional Court (Verfassungsgerichtshof – VfGH).

7.1.7 Types of public procurement and award procedures

Above the thresholds the BVergG 2006 contains the same procedures as regulated in the Directives. Below the thresholds additional procedures are provided, notably none-open procedures with or without previous publication depending on the estimated amount of order. Also provisions for direct procurements below a sub threshold of 40.000 EUR do. There are also transparency provisions for the award of service concessions. The publication of procurement procedures above the thresholds strictly follows the requirements of the Directives. Apart from publishing a notice in the OJ federal contracting authorities have to publish the notice in the "Amtlicher Lieferanzeiger" (public supply indicator), a supplement to a daily bulletin (Wiener Zeitung) for official announcements. There are simplified rules for publications below the thresholds.

In accordance with the jurisprudence of the ECJ (Alcatel case) contracting authorities have to inform the participating tenderers of their intended award decision prior to the conclusion of the contract. The contracting authority must not award the contract during a certain period of time following the information (in dependence of the procedure seven days or two weeks above the thresholds). By this, it is ensured that the tenderers may challenge the decision before the review body. Contracts concluded before the expiry of the time limit are null and void.

The BVergG 2006 also contains a strict system of time limits (preclusive time limits). Tenderers have to challenge aged unlawful decisions of contracting authorities within a certain time limit from the moment they become known with the result that, when that period has passed, it is no longer possible to challenge such a decision or to raise such an irregularity.

Any appeal before the conclusion of a contract has to be filed to the competent review body (s. above), damage claims to the civil courts.

7.1.8 New organisational and managerial arrangements

There is no specific legal framework for Public Private Partnerships in Austria. Any activity in this field has therefore to be carried out in accordance with the pertinent general rules (constitution, ECT, procurement rules). Nevertheless, the municipal sector shows an increasing tendency in organizing the provision of services in the general interest (e.g. utilities) jointly with private partner and investors.

As mentioned before, a central purchasing body (Bundesbeschaffung-GmbH) has been established in 2001 to handle the procurement of services and supplies for the federal government. Procurement procedures for framework contracts are launched after inquiring the specific needs of the departments.

7.1.9 Means of e-procurement

The BVergG 2006 released on 1st February 2006 equates traditional with modern electronic communication technologies. Beyond this, electronic procurements are i.e. supported and forced by reduced time limits and recommendations to use electronic methods for transmissions. Electronic auctions are applicable as second part of a procedure above and below the thresholds.

The BVergG 2006 governs the field of procurement above and below the thresholds, service concessions, electronic auctions and framework agreements, dynamic systems of procurement, competition dialogue, direct procurements and also contains rules for Annex B services.

7.1.10 The e-procurement

As indicated before, the BVergG 2006 contains a set of provisions, which are aimed to force and facilitate e-procurement in Austria. In accordance with the e-commerce and the e-signature Directives the communication and transactions between the contracting authority and the tenderers can be settled by electronic means (e-mail, internet). There are special provisions for the submission, incoming (time-stamp) and opening of electronic offers, notably that they must be signed and submitted with an advanced electronic signature.

The BVergG 2006 also regulates e-auctions below and above the thresholds. They can be used as part of a foregoing procedure for standardized products and services and can be based on either the lowest price only or other quantifiable economic criteria. There are no special provisions on electronic market places.

7.2 LOCAL AUTHORITIES IN AUSTRIA AND EC PUBLIC PROCUREMENT

7.2.1 Organisation and profile of procurement

In Austria most of the local authorities agree that procurement has traditionally been seen as a 'back office' function and, until recently, has not been viewed with the necessary significance. This research also revealed that where this is the case, procurement staff can feel unsupported in their attempts to effect improvement across the local authority. The last few years this sight changed in a strong and efficient way.

7.2.2 Delegated procurement

Beyond common-use items/services, local authorities in Austria typically delegate responsibility for procurement and commissioning to individual service departments and specific specialists responsible (f. e. "Zivilingenieure") – directly involved in the delivery of a service. The reason given for this is that those closest to the point of delivery should have a good understanding of the client-side and an appreciation of what service-users want – they should also have specific knowledge of the market for that service.

Where a local authority has a central procurement unit (CPU) – such a unit is present in a few bigger local authorities – the procurement of common-use items/services generally falls to this unit. Generally, the procurement of major services and strategic procurement is more likely to be conducted by individual service departments in smaller local authorities.

7.2.3 Tendering process

Standardisation of procurement documentation and templates (according to much of the procurement literature) in Austrian local authorities, not only, saves time and money for the local authority itself, but also for the contractors bidding for the authority's contracts. Local authorities in that way often use corporate standard documents. It would appear that it is most common for corporate standard documents to be used for goods contracts, which is perhaps to be expected, as it is most likely for this type of procurement to be conducted corporately.

7.2.4 Training and capacity

In order of the rapidly changing role of efficient managed procurement and commissioning, local authorities in Austria appropriate skilled staff. These authorities place more emphasis on their staff having practical experience and on-the-job training, rather than professional procurement qualifications.

7.2.5 Electronic procurement

According to the Austrian e-Procurement Law public authorities must be capable of delivering fully electronic transaction services. Traditionally, trade business has been done via mail, facsimile. These procedures resulted in high transaction costs. With modern electronic media,

public e-procurement has become an important rule for modernization and improvement of public procurement in the local authorities. Today, the advantages of public e-procurement are less complexity, faster handling of the procurement procedure, enhanced quality of the procurement process and fewer costs. Conventional procurement is well known and regulated by law. Therefore, the e-Procurement Law addresses the technical part of the procurement. The buzzwords are communication channels, document format, encryption, time stamp, saving of documents, server break down and archival storage. These legal rules should prevent illegal arrangements.

7.2.6 Conclusions

Procurement approaches and issues vary according to the type of procurement and contract in question. So-called 'strategic critical' procurement in local government (for example social services and other major outsourced services provided to the public) may offer the greatest potential for improvement. This area of procurement might be the least developed in terms of skills and resources, joint procurement and market interest. An item/service is said to be 'strategic-critical' if its non-performance or non-delivery would put the ability.

Local authorities are facing increasingly demanding efficiency and improvement agendas and by working together and with other buying organisations, they can provide local authorities with a far more effective service than if they were working separately.

Finally it is to say, that the legal certainty in the procurement law is not fully established for all "players" in this field. On the other hand there is a long and inconsistent jurisdiction of the ECJ, concerning the procurement rules.

In the last few years local authorities in Austria had to realise, that legal rules concerning services of general interest – f. e. water supply, waste water disposal, energy supply, etc. – became more and more restrictive. This basically means the relevance of the rules of public procurement in the Internal Market. These rules are going to restrict the commercial freedom of the local authorities in Austria by enlarging the rules of the Internal Market and tendering goods and services.

Chapter 8 THE EU REGIONAL AND COHESION POLICY

THE EU REGIONAL AND COHESION POLICY

Ilze Ciganska – Latvian Association of Local and Regional Governments, Riga

With the entry of twelve new member states[1] the European Union's (EU) internal regional disparities have increased significantly, creating new challenges and demanding changes in the whole EU Regional policy and regional expenditure system. During the new planning period from 2007 to 2013 a total of EUR 308 billion will be allocated for the implementation of the EU Regional policy goals, which is equivalent to approximately one third of the total EU budget.

The reform aims to target structural actions which are more focused on the EU's strategic guidelines, more concentrated on the most disadvantaged regions, and more decentralised and simplified. The defined policy objectives for this period are: **convergence**, **regional competitiveness and employment and territorial cooperation**[2]**.** The idea is to create potential so that the regions can fully contribute to achieving greater growth and competitiveness and, at the same time, to exchange ideas and best practices.

In the 2007–2013 period three funds will finance regional programmes, according to the nature of the assistance and the type of beneficiary:

- the European Regional Development Fund (ERDF) will cover programmes involving general infrastructure, innovation, and investments. Money from the ERDF is available for less pros-perous regions of all member states;
- the European Social Fund (ESF) will pay for vocational training projects and other kinds of employment assistance and job creation programmes. As with the ERDF, all member states are eligible for ESF assistance;
- the Cohesion Fund will cover environmental and transport infrastructure costs as well as projects to develop renewable energy. Funding from this source is restricted to member states whose living standards are less than 90 percent of the EU average. This means in effect the new member states plus Portugal and Greece. Spain, which benefited under earlier Cohesion Fund operations, will be phased out.

Funding for regional development will be allocated according to two main objectives:

- The convergence objective: 81.5 percent of the total spending will go to the least developed member states (GDP per capita is less than 75 percent of the Community average) as well as to "phasing-out" regions (16 regions of the EU15 affected by the so called statistical effect of the larger EU) to help them developing their infrastructures and their economic and human potential.
- The regional competitiveness and employment objective: eligible regions can apply for funding under this heading to support innovation and research, sustainable development and job training. This heading accounts for 16 percent of overall spending.

[1)] 10 countries (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia, Malta and Cyprus), joined EU on May 2004, Romania and Bulgaria – on January 2007.

[2)] http://europa.eu/pol/reg/overview_en.htm.

The map of eligible areas in the EU under the Convergence Objective and the European Competitiveness and Employment Objective can be downloaded here: http://ec.europa.eu/regional_policy/atlas2007/index_en.htm.

The remaining 2.5 percent of the available funds will go to cross-border and inter-regional cooperation projects – European Territorial Cooperation objective. It is based on the old INTERREG initiatives and will be financed by the ERDF. The aim of this objective is to promote common solutions for neighbouring authorities in the fields of urban, rural and coastal development, the development of economic relations and the creation of networks of small and medium-sized enterprises.

Under the third objective a new initiative called "Regions for Economic Change" has been adopted (8th November, 2006). It introduces new ways to dynamise regional and urban networks and to help them work closely with the Commission, to have innovative ideas tested and rapidly disseminated into the Convergence, Regional Competitiveness and Employment as well as European Territorial Cooperation programmes. Financing for the networks projects linked to the initiative is possible under INTERREG IVC and URBACT II.

EU Structural Funds are instruments for the achievement of the defined EU Regional policy goals. However, in order to use those instruments effectively and efficiently on national level, a clear and targeted national policy is needed. Countries which manage to define sustainable and effective development goals and strategies are more likely to facilitate their economic growth by using EU funding.

The EU Regional policy focuses on two core values – solidarity and cohesion, which is why the twelve newcomers will receive the largest part of the total regional spending between 2007 and 2013, although they represent less than one quarter of the total population. One of the representatives of this group is Latvia, which became eligible for the EU Structural Funding with its accession in 2004.

The next chapters will describe the Latvian experience gained in the last four years, achievements and lessons learned.

8.1 LATVIAN REGIONAL POLICY AND IMPACT OF THE EU STRUCTURAL FUNDS

Disregarding the fact that Latvia is a relatively small country (area – 6.4 thousand km^2; inhabitants – 2.3 million), there are considerable territorial disparities. The differences exist not only on regional scale (there are five planning regions in Latvia; GDP in the richest region – Riga region – is three times higher than in the poorest region – Latgale region), or regarding urban and rural territories, but also between smaller administrative units within one region (towns, amalgamated municipalities, rural municipalities). Those differences determine the need for targeted national policy on regional development, foreseeing concrete targets, instruments, and finances as well as monitoring system.

At the same time Latvia has to focus on the effective development of the whole territory. According to the socioeconomic indicators Latvia still falls behind the EU average. For example, according to the Eurostat data GDP per capita in EU 27 was 24.8 thousand EUR, but in Latvia – 14.4 thousand EUR (58.1 percent from EU 27 average).

8.1.1 The development of regional policy in Latvia

As in most accession countries, development of the Latvian national policy was highly influenced by the principles defined in the EU legislation. It also refers to the regional policy and establishments of the EU Structural Funds. The regional policy was mainly based on the principles of the EU regional policy – programming, concentration, additionality, partnership and openness. The initial dominating view was that the objective of the regional policy is only support for development of separate regions or territories that are lagging behind the overall development.

The legal basis of the regional development policy started with the adoption of the regional development concept (1996). Until the adoption of the Regional Policy Guidelines (2004), which were adopted in accordance with the Law on Regional Development (2002), it was the main policy planning document related to the regional development in Latvia. Over this period the programme of the Specially Assisted Territories was the most important resource for the support of regional development. The methodology of the calculation of the support intensity according to the territorial development index has been integrated also in some of the EU Structural Funds grant schemes. All together municipalities can receive up to 60 percent of the requested national co-financing from the state budget – the territories with lowest Territorial Development Index receive highest subsidy from the state budget.

Starting with the adoption of the Law on Regional Development (2002) and further developed with the Regional Policy Guidelines (2004) the regional development concept gains wider meaning. The new approach determines that the regional policy covers all the territory seeking most effective development instruments for every single territory. Unfortunately not all of the activities have been put into practice.

In general the regional policy in Latvia is not yet clearly defined and sustainable. The policy by its nature is rather demonstrative. The definition of the goals for regional development is still in the process. Besides the measures and activities targeted at regional development are not implemented consistently and their results are not evaluated properly.

8.2 THE IMPLEMENTATION OF THE EU STRUCTURAL FUNDS FUNDING IN LATVIA IN THE PERIOD OF 2004–2006

Since the accession of Latvia to the EU (May 2004), Latvia has access to a significant amount of the EU funding. The assignment of the EU Structural Funds as well as the most important part of the public investments and support was implemented within the framework of the National Development Plan or Single Programming Document (Objective 1 Programme for the period 2004–2006; approved 18th December, 2003).

On the European scale Latvia represents a single objective region, and due to that reason the Single Programming Document (SPD) cannot be evaluated as a plan for the reduction of the existing territorial disparities within the country (as targeted national regional policy document), but more as a set of activities for the development of the whole country or in other words as part of the EU regional policy.

The SPD 2004–2006 defined four priorities:
- promotion of territorial cohesion (ERDF);
- promotion of enterprise and innovation (ERDF);
- development of human resources and promotion of employment (ESF);
- promotion of development of rural areas and fisheries (4.1 – promotion of agriculture and development of rural territories (EAGGF); 4.2 – promotion of development of sustainable fisheries' industries (FIFG)).

The total funding from the EU Structural Funds available for Latvia in 2004–2006 were 857 236 907 EUR (625 568 826 EUR from the EU Structural Funds and 231 668 081 EUR national funding). For the projects co-financed from the Cohesion Fund 515.87 million EUR were allocated from the public funding (EU and state budget resources). It is estimated that nearly 98 percent from all available EU Structural Funds funding for the period 2006–2008 will be uptaken.

The implementation of projects was based on the following schemes:
- open calls for tenders (ERDF, ESF, EAGGF and FIFG);
- national programmes;
- grant schemes (ERDF and ESF).

8.2.1 Implementation challenges

The Latvian system of the Structural Funds management has been identified as one of the most complicated in the EU. During the first planning period, the administrative structure was rather complex and heavy. Besides, the implementation of the EU Structural Funds was accompanied by the process of concentration and centralization – the local and regional aspect was a secondary issue. Municipalities were excluded from the planning and management processes.

Due to the reason that this was the first experience in the EU funds management for most of the implementing agencies (there are eight implementing agencies in Latvia, and among other delegated functions they are also responsible for the evaluation of project reports and performance of project audits), institutional and human resource aspects played a rather hindering role and slowed the document circulation. One of the main concerns was to avoid the risk that the project activities or particular costs would be acknowledged as ineligible and Latvia would not receive the expected EU funding. From one side, this ensured high percentage of the EU Structural Funds allocation, but from the other side this created exaggerated and sometimes even ridiculous demands for the project implementers. Besides, the demands could change with the change of responsible officer. The bureaucratic load also had negative impact on the costs of the preparation and implementation of the projects.

In the first planning period one of the largest challenges was the increase of project costs. The construction costs have increased significantly and unpredictably. For some projects (especially large scale and long term projects) the project costs increased even for several times.

The increase of the approved project expenditures cannot be covered from the EU Structural Funds, they have to be covered from other sources. Until mid-2007 the difference was mainly covered from the state budget. Now local governments can apply for the state subsidy which is calculated according to the territory development index: the least developed local governments can receive up to 75 percent of the cost increase, comparatively stronger territories – up to 60 percent and highly developed territories – up to 30 percent.

The experience from the first period shows, that support and funding for projects frequently were not given to where it was needed most, but to those who were the first to submit their proposals. In some project programmes detailed qualitative evaluation criteria were not developed, the projects were evaluated only according to administrative criteria. For example, in the first rounds of the project calls in the programme "Support for the Modernization of the Business Infrastructure", the funding was allocated according to the principle "first come, first served", which led to the tensed situation and public dissatisfaction.

8.2.2 Impact of the EU Structural Funds in Latvia in the period of 2004–2006

The significance of the EU Structural Funds in the development processes cannot be denied. In most cases the projects would not be implemented without the Structural Funds' support, but the allocation of the support and impact of the EU Structural Funds in the planning period of 2004–2006 cannot be evaluated unequivocally. According to the research "The Evaluation of the EU Structural Funds Macroeconomic Funds" (June 2008), which was carried out by the Baltic International Centre for Economic Policy Studies in cooperation with Baltic Consultancies it can be stated, that:

- the availability of the funding positively stimulated the main macroeconomic indicators (GDP grew for 21.3 percent, productivity increased for 9.9 percent, employment – for 8.9 percent),
- but at the same time the flow of the funding into the national economy indirectly stimulated the increase of the inflation (at the beginning a large part of the funds were stocked up in form of salaries; the resources were not concentrated on the activities that increase the production), and negatively influenced the trade balance (from 2.1 percent of the GDP to 8.4 percent of the GDP per year).

The evaluation of the impact of the EU Structural Funds on the regional development (the assessment was carried out by the Local Government Consultation Centre; 2008) shows that the implemented activities did not actually reduce the existing territorial disparities in Latvia. Comparing five planning regions as well as 33 administrative territories (26 districts and seven mayor cities) by statistical data reflecting socioeconomic situation and their dynamic, the main conclusion is that contrary to the overall goals, the territorial disparities are increasing. There is direct coherence between total committed financing and socioeconomic development level in region – more developed region attracts more funding.

Project evaluation criteria does not assure the application of regional development aspects. Evaluation according to the regional development aspects (components) included in project evaluation criteria is formal.

It was also concluded that the possibilities to promote sustainability in the development have been used insufficiently. More sustainable activities would provide more stable development of Latvia in future. Dividing all SPD activities in accordance to total planned amount of financing (plan of 1st January 2006) in those that strongly promote sustainability and those that do not, 58 percent of total planned public financing compose activities that strongly promote sustainability and 42 percent that do not promote sustainable development directly.

8.3 LESSONS LEARNED

In the new planning period a total of 4.6 billion EUR will be available for Latvia (for the programmes under Convergence Objective – 4.5 billion EUR and under the Territorial Cooperation priority – 90 million EUR). The National Strategic Reference Framework (NSRF 2007–2013) determines the main activities and targets for this period.

The focus of the NSRF for the new period is:
- development and efficient use of human resources;
- strengthening competitiveness and progress towards a knowledge-based economy;
- improvements in public services and infrastructure as a precondition for balanced national and territorial development.

In the new period a lot of steps have been performed in order to reduce the administrative and bureaucratic burden. The following improvements have been introduced:
- the funds management system has been simplified (one management system for both funds – the Structural Funds and the Cohesion Funds);
- the project evaluation process has been simplified (decision on approval or rejection of the project is taken in one institution instead of three project approval levels);
- the time frame for the approval of the projects has been reduced (from twelve months to three months);
- flexible advance payment system has been introduced;
- in order to ensure the effective implementation of the projects and reduce the impact of the growth of project expenditures, the project duration will be defined in the provision for implementing the EU activity;
- the evaluation criteria is more detailed, avoiding the interpretations regarding demands for the project implementers;
- the elaboration of the project selection criteria and other project documentation was carried out in the partnership with NGOs, regional and social partners.

In the programming documents for the new period the regional aspect is more detailed and the regional policy goals stated in the Regional policy guidelines are incorporated into the NSRF.

In the preparation processes a larger attention has been paid to the attempts to increase the efficiency of the EU Structural Funds implementation. It is planned to give larger support for the projects ensuring greater outputs (results) with less expenses, larger part of the co-financing, reducing the costs of public services, improving the quality, etc. It is planned to give larger support to medium term projects (instead of long term projects), thus reducing the risk of large project costs increase.

One of the main problems that still should be addressed is the necessity to improve the document flow. Unlike other countries, the relations with the third parties (project implementers) are regulated with the Regulations of the Cabinet of Ministers, which means that for every single project call separate Regulations have to be adopted (there are 150 programmes in Latvia). This is one of the reasons why the implementation of new programmes has been delayed. The processes would be more effective if the decisions regarding the binding project documentation could be adopted, for example, in the Monitoring Committee.

The largest challenges for the new period are the necessity to stimulate the increase of the economical growth and the ability to address the consequences of the national and global economical crises. The EU Structural Funds, effectively and efficiently used, can have significant and positive impact on the state's sustainable development and facilitate the processes of the social inclusion and cohesion, as well as ensure the contribution of Latvia to the implementation of the Lisbon strategic goals. As mentioned above a lot of steps have been performed in order to ensure easier access to the EU Structural funding in Latvia, however, results of these efforts will be perceivable only after closing the period 2007–2013.

Chapter 9 URBAN PLANNING AND DEVELOPMENT IN EU POLICIES

URBAN PLANNING AND DEVELOPMENT IN EU POLICIES

Boris Tonhauser – Council of European Municipalities and Regions, Brussels

Urban development has become deeply rooted in the policies of the European Union. The pivotal role of Europe's cities in the economic and social development—as well as in the cohesion of the Community –has not only been duly recognised, but has also been pursued and supported by a number of policy documents, instruments or activities.

It has been long recognised, that Europe's towns and cities remain its primary source of wealth creation and the centre of its social and cultural development. However, the cities face persisting problems relating to rapid economic adjustments, unemployment, environmental conditions and traffic congestion but also poverty, poor housing, crime and drug abuse[1]. Another aspect of ongoing urbanisation in Europe is the disbalanced development of (and in) different territories. Already the Commission's *First Report on Economic and Social Cohesion* from 1996 highlighted the existence of the so-called "archipelago Europe" – a loose cluster of 12 highly urbanised islands of innovation (London, Amsterdam/Rotterdam, Île-de-France, Ruhr, Frankfurt, Stuttgart, Munich, Lyon/Grenoble, Turin, Milan) where almost half of the resources of the second and third framework programmes on research and technological development have been spent. Other types of identified disbalance included rates of income and employment, social cohesion and quality of life, sustainability, democracy and solidarity.[2]

Many of the various EU policies address these problems through a choice of instruments which have a direct or indirect influence over the development and the cohesion of space, yet they are mostly sectoral policies, each with a distinct set of tools and methodologies. The European Union has no formal competency in spatial planning; however, the importance of the issue for other policies has been recognised, together with a need for an urban perspective. The Commission has often devoted its work to the urban environment and noted its pivotal role in the development of Community territory. It also undertakes an examination of EU policies from the point of view of their urban impact, with the aim to improve policy integration at urban level.

9.1 REGIONAL AND COHESION POLICY

The main EU policy in the context of regional and territorial development, with the most direct impact on urban planning and development, is the cohesion policy. On 24th June 1988 the Council agreed on a regulation which put existing EU funds into the context of "economic and social cohesion," a term which the Single European Act[3] had introduced two years earlier. Since then, Cohesion Policy has become one of the most important and most debated EU policies.[4] The treaties of Maastricht, Amsterdam and Nice reaffirmed the policy's importance

1) Towards an Urban Agenda in the European Union, COM(97)197, 6 May 1997.
2) First Report on Economic and Social Cohesion, COM(96)542, 6 November 1996.
3) Single European Act (1986), Official Journal L 169 of 29 June 1987.
4) EU Cohesion Policy 1988–2008: Investing in Europe's future. Inforegio Panorama 26/2008.

and its scope was even broadened by the draft Lisbon Treaty, adding territory as a new dimension on the EU cohesion policy, alongside with economic and social cohesion.

9.1.1 Cohesion policy 2007–2013

Urban dimension

The European Cohesion policy is operating in discrete programming periods, with a set of agreed objectives as well as instruments in the form of financial funds. Its strategic framework is outlined in the Community Strategic Guidelines[5] and the principles and priorities for the period 2007–2013 have been adopted by the Council[6] in 2006; these documents also precise the role of urban policy in the context of the EU Regional and Cohesion Policy.

In order to help national, regional and city authorities in the preparation of the new round of Cohesion Policy programmes, the Commission also published a communication document titled *Cohesion Policy and cities: The urban contribution to growth and jobs in the regions*[7] which specifies the indications of the Strategic Guidelines and is a baseline document on the importance of sustainable urban development in European regional policy for 2007–2013.

Currently, the cohesion policy operates in the programming period 2007–2013, pursuing three principal objectives and three financial instruments; it will benefit from 35,7 percent of the total EU budget or EUR 347.41 billion.[8]

Objectives	Financial instruments		
1. Convergence	ERDF	ESF	CF
2. Competitiveness			
3. European Territorial Cooperation			

Table 1. Objectives and financial instruments of the EU Cohesion Policy in the programming period 2007–2013

Objective 1: Convergence

The convergence objective aims to promote growth-enhancing conditions and factors leading to real convergence for the least-developed Member States and regions. In EU-27, this objective concerns – within 17 Member States – 84 regions with a total population of 154

5) Communication from the Commission—Cohesion Policy in Support of Growth and Jobs: Community Strategic Guidelines, 2007–2013, COM(2005) 0299 of 5 July 2005.
6) Council Decision of 6 October 2006 on Community strategic guidelines on cohesion (2006/702/EC), Official Journal L 291/11 of 21 October 2006.
7) Communication from the Commission to the Council and Parliament—Cohesion Policy and cities: The urban contribution to growth and jobs in the regions, COM(2006) 385, of 13 July 2006.
8) European Commission, Regional Policy, Key Objectives (http://ec.europa.eu/regional_policy/policy/object/index_en.htm).

million, and per capita GDP at less than 75 percent of the Community average, and – on a "phasing-out" basis – another 16 regions with a total of 16.4 million inhabitants and a GDP only slightly above the threshold, due to the statistical effect of the larger EU. The amount available under the Convergence objective is EUR 282.8 billion, representing 81.5 percent of the total.

Objective 2: Competitiveness

The regional competitiveness and employment objective aims at strengthening competitiveness and attractiveness, as well as employment, through a two-fold approach. First, development programmes will help regions to anticipate and promote economic change through innovation and the promotion of the knowledge society, entrepreneurship, the protection of the environment, and the improvement of their accessibility. Second, more and better jobs will be supported by adapting the workforce and by investing in human resources. In EU-27, a total of 168 regions will be eligible, representing 314 million inhabitants. Within these, 13 regions which are home to a total of 19 million inhabitants represent so-called "phasing-in" areas and are subject to special financial allocations due to their former status as "Objective 1" regions. The amount of EUR 55 billion – of which EUR 11.4 billion is for the "phasing-in" regions – represents just below 16 percent of the total allocation.

Objective 3: Territorial co-operation

The European territorial co-operation objective will strengthen cross-border co-operation through joint local and regional initiatives, trans-national co-operation aiming at integrated territorial development, and interregional co-operation and exchange of experience. The population living in cross-border areas amounts to 181.7 million (37.5 percent of the total EU population), whereas all EU regions and citizens are covered by one of the existing 13 transnational cooperation areas. EUR 8.7 billion (2.5 percent of the total) available for this objective is split as follows: EUR 6.44 billion for cross-border, EUR 1.83 billion for transnational and EUR 445 million for inter-regional co-operation.

Financial instruments

European Regional Development Fund (ERDF)

The European Regional Development Fund (ERDF)[9] aims to strengthen economic and social cohesion in the European Union by correcting imbalances between its regions. The ERDF finances:

- direct aid to investments in companies (in particular SMEs) to create sustainable jobs;
- infrastructures linked notably to research and innovation, telecommunications, environment, energy and transport;

[9] Regulation (EC) No. 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No. 1783/1999, Official Journal L 210/1 of 31 July 2006.

- financial instruments (capital risk funds, local development funds, etc.) to support regional and local development and to foster cooperation between towns and regions;
- technical assistance measures.

European Social Fund (ESF)

The European Social Fund (ESF)[10] sets out to improve employment and job opportunities in the European Union. It intervenes in the framework of the Convergence and Regional Competitiveness and Employment objectives.

The ESF supports actions in Member States in the following areas:
- adapting workers and enterprises: lifelong learning schemes, designing and spreading innovative working organisations;
- access to employment for job seekers, the unemployed, women and migrants;
- social integration of disadvantaged people and combating discrimination in the job market;
- strengthening human capital by reforming education systems and setting up a network of teaching establishments.

Cohesion Fund

The Cohesion Fund[11] is aimed at Member States whose gross national income (GNI) per inhabitant is less than 90 percent of the Community average. It serves to reduce their economic and social shortfall, as well as to stabilise their economy. It supports actions in the framework of the Convergence objective. It is now subject to the same rules of programming, management and monitoring as the ESF and the ERDF.

For the 2007–2013 period the Cohesion Fund concerns Bulgaria, Cyprus, the Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia and Slovenia. Spain is eligible to a phase-out fund only as its GNI per inhabitant is less than the average of the EU-15.

The Cohesion Fund finances activities under the following categories:
- trans-European transport networks, notably priority projects of European interest as identified by the Union;
- environment; here, Cohesion Fund can also support projects related to energy or transport, as long as they clearly present a benefit to the environment: energy efficiency, use of renewable energy, developing rail transport, supporting intermodality, strengthening public transport, etc.

10) Regulation (EC) No. 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund and repealing Regulation (EC) No. 1784/1999, Official Journal L 210/12 of 31 July 2006.
11) Council Regulation (EC) No. 1084/2006 of 11 July 2006 establishing a Cohesion Fund and repealing Regulation (EC) No. 1164/94, Official Journal L 210/79 of 31 July 2006.

Relevance to urban development

Level of intervention

The level of analysis as well as the level of intervention of the cohesion policy is based on a classification of statistic territorial units called NUTS (Nomenclature des Unités Territoriales Statistiques). These are defined in cooperation between the Statistical Office of the European Communities (Eurostat) and the national statistical offices of the member states. According to objective, it is the level NUTS 1, NUTS 2 or NUTS 3 which is the level of intervention of the respective instrument. However, none of them is equivalent to a single municipality or city.

Operational programmes

Each intervention is defined in the so-called Operational Programme (OP), which has a fixed sectoral or territorial (NUTS 1–3) extent. Each of the programmes is subject to the "one fund per OP" principle, which does not allow for cross-financing of one operational programme from different financial instruments.

Urban development, however, is a complex undertaking with different issues at stake, many of them cross-sectoral, such as transport, environment, energy, social affairs, economic development, employment, health-care etc. In this case, the "flexibility rule" can be applied: Specific provisions in the general regulation[12] allow for complementary funding between ERDF and ESF, of up to 10 percent of actions eligible under the other fund, or even up to 15 percent in the context of an integrated urban development strategy.

Former Community Initiative Programmes

Specific programmes relevant to urban policies, named Community Initiative Programmes in the former programming period (2000–2006), have been integrated into the main objectives of the cohesion policy in the current programming period:

- URBACT II (URBAN I in the former period) is financed from the European Regional Development Fund (ERDF);
- EQUAL is financed from the European Social Fund (ESF);

URBACT

URBACT – the European Programme for Urban Sustainable Development – aims to foster the exchange of experience among European cities and the capitalization and dissemination of knowledge on all issues related to sustainable urban development. The main objective of the programme is to participate in the implementation of the combined Lisbon[13]–Gothenburg[14]

12) Council Regulation (EC) No. 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No. 1260/1999, Official Journal L 210/25 of 31 July 2006.
13) Presidency Conclusions, Lisbon European Council, 23–24 March 2000.
14) Presidency Conclusions, Göteborg European Council, 15–16 June 2001.

strategy by promoting integrated sustainable development policies. It operates as a separate Operational Programme[15] under the Objective 3 (European Territorial Cooperation) of the Cohesion Policy.

Starting as the URBACT I Community Initiative in the previous programming period (2002–2006), the current URBACT II programme (2007–2013) is now financed directly from the European Regional Development Fund (ERDF) with a total budget of EUR 15.9 million. The partners receive co-financing of up to

- 80 percent for partners from convergence areas
- 70 percent for partners from competitiveness areas
- 50 percent by national contributions for partners from Norway and Switzerland.

Partners are urban actors from the 216 cities in EU-27, benefiting from the URBAN I and URBAN II programmes and Urban Pilot Projects, including cities, regional authorities, universities and research centres. To enhance the partnership principle, partnership agreements will be developed particularly with city networks, European thematic networks dealing with urban development, national and transnational networks of local authorities as well as private actors. In addition, partners from Norway and Switzerland can participate without the use of ERDF allocations, but can benefit from national contributions.

URBACT II features a set of concrete objectives called shortly “Exchange – Capitalise – Disseminate”:

- Provide an exchange and learning tool for policy decision-makers, practitioners and other actors involved in developing urban policies;
- Learn from the exchanges between URBACT partners that share experiences and good practices;
- Disseminate good practices and lessons learned from exchanges to all European cities.

The Operational Programme outlines two thematic priority axes defined for the period 2007–2013, each with a number of sub-themes (A third thematic axe is also defined: Technical Assistance):

1. Cities, Engines for Growth and Jobs
    - 1.1. Promoting entrepreneurship (including Financial Instruments)
    - 1.2. Improving Innovation and Knowledge Economy
    - 1.3. Employment and Human Capital (employability, qualification, access to labour market, education and training systems)

2. Attractive and Cohesive Cities
    - 2.1. Integrated Development of sectoral urban policies (housing, renewable energies, ICT, integrated transport policies) and integrated development of deprived areas (brownfields, inner cities, peripheral deprived areas)

[15] The Urban Development Network Programme URBACT II: An Exchange and learning programme for cities contributing to the European Commission Initiative “Regions for Economic Change”. Final Operational Programme, 30 June 2007.

2.2. Social inclusion and integration (managing immigration, young people, health, security, culture)
2.3. Environmental issues (waste, improving monitoring of the environment, improving air quality; water quality and supply; moving to a recycling society)
2.4. Governance and Urban Planning
(town planning, multi-level government, citizens' participation, horizontal and vertical territorial governance)

Target groups of URBACT II are the city policy makers and practitioners, regional and national authorities in charge of urban issues. The activities aim to assist these policy-makers and practitioners in the cities and managers of operational programmes under the Convergence and Competitiveness objectives to define action plans on sustainable development in urban areas, which may be selected for Structural Funds programmes. All activities must thus have an effective impact on sustainable urban development practices and local policies. To this end, special tool and features of the programme are being implemented:

- Local Support Groups (LSG) – Each URBACT partner sets up a group consisting of local stakeholders concerned by the problems and issues tackled. One of the key responsibilities of the LSG is to draft a Local Action Plan.
- Local Action Plans (LAP) – At the beginning of each project, a plan should be produced by all concerned parties assembled in a Local Support Group, identifying the problems and methods.
- Participation of Managing Authorities (MA) – The programme strongly encourages the participation of the Managing Authorities of European Operational Programmes, in order to achieve mutual synergy and increased impact on local policies.

It should be noted, that the URBACT II allows for the participation of partners from EU accession and neighbouring countries covered by the Instrument for Pre-Accession (IPA). They can participate in operations using IPA funding, without allocations from the European Regional Development Fund (ERDF).

EQUAL

Mentioned here for the sake of comprehensiveness, the EQUAL Programme contributes to the EU's strategy for more and better jobs and for ensuring equal treatment with respect to employment. Its mission is to promote a better model for working life by fighting discrimination and exclusion on the basis of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation. EQUAL is funded within the Cohesion Policy framework through the European Social Fund (ESF) and is being implemented in, and between, the Member States up until 2008.

9.2 INTERGOVERNMENTAL COORDINATION

Besides formal institutionalised processes, policies in the European Union are also being developed through intergovernmental coordination, i.e. voluntary cooperation of the Member

States without a formal role of the Council, the Commission, the European Parliament or the European Court of Justice. This process should not be confused with the "open method of coordination" which involves a more formal role of the Council. The intergovernmental coordination usually takes the form of informal ministerial meetings (sometimes called Informal Councils) of ministers responsible for a given policy area.

9.2.1 European Spatial Development Perspective (ESDP)

Notwithstanding the lack of Community competencies in the area of spatial planning, the need to improve cooperation between different sectoral policies on a given territory has been long recognised. In 1997, the European Spatial Planning Observatory Network (ESPON) has been established to provide policy makers on the European, national and regional levels with knowledge on territorial trends and impacts of spatial policies. In 1999, at an informal council of ministers responsible of spatial planning[16] held in Potsdam a policy document has been adopted with the title European Spatial Development Perspective (ESDP).[17]

The document outlines an integrated, multi-sectoral and indicative strategy for the spatial development, highlighting the following key ideas:

- Integrated approach – functional synergies and interdependencies of different sectoral policies;
- Spatial development – spatial orientation of policies: polycentric and balanced (urban, rural) development;
- Strategic approach – multi-focus approach towards balanced and sustainable development.

Although the European Spatial Development Perspective is not a binding document, the intent to deliver results derived from the policy recommendations has led to a considerable work at the EU level during preparations and follow-up, especially in the area of relations between Community policies and spatial planning. In the long-term perspective, it has reinforced important discussions and paved the way for European spatial planning to become a part of an emergent system of European multi-level governance, where power is exerted at multiple levels of government. Last but not least, it became another example of the emerging Community role in spatial planning.

9.2.2 European Spatial Planning Observatory Network (ESPON)

As a part of the overall framework of European spatial policies, the European Spatial Planning Observatory Network (ESPON) has been established in 1997 as a network of national focal points, each of which coordinate a sub-network of research institutes in the Member State

16) This should not be confused with the European Conference of Ministers responsible for Spatial/Regional Planning (CEMAT), which brings together representatives of the 47 member states of the Council of Europe.

17) European Spatial Development Perspective: Towards Balanced and Sustainable Development of Territory of the European Union, Agreed at the Informal Council of Ministers responsible for Spatial Planning in Potsdam, 10–11 May 1999.

concerned, while a permanent Secretariat is entrusted with the coordination of the national focal points at the Community level.[18]

ESPON currently finances and monitors applied research projects, which are carried out by transnational scientific consortia (Transnational Project Groups), contracted by the programme Managing Authority through a competitive process. These include

- Thematic projects (territorial effects of major spatial developments on the background of typologies of regions, and the situation of cities on the base of broad empirical data);
- Policy impact projects (spatial impact of Community sector policies, Member States' spatial development policy on types of regions with a focus on the institutional inter-linkages between the governmental levels and instrumental dimension of policies on the base of broad empirical data);
- Coordinating cross-thematic projects (evaluation of the results of the other studies towards integrated results such as indicator systems and data, typologies of territories, spatial development scenarios and conclusions for the territorial development);
- Scientific briefing and networking (synergies between the national and EU sources for research and research capacities);
- Studies and scientific support projects (deepening results already achieved by current ESPON projects).

ESPON 2013 Operational Programme

On 7th November 2007 the European Commission adopted the ESPON 2013 Programme, which is part-financed by the European Regional Development Fund (ERDF) under Objective 3 (European Territorial Cooperation). The EU27+4 (including Iceland, Norway, Switzerland and Liechtenstein) countries will participate in the programme and contribute financially to the projects.

The first round of calls for proposals has been published on 21 January 2008, focusing on the following themes:

1. Calls for Proposals on applied research projects
    - 1.1. Cities and urban agglomerations: their functionality and potentials for European competitiveness and cooperation
    - 1.2. Development opportunities in different types of rural areas
    - 1.3. Demographic and migratory flows affecting European regions and cities
    - 1.4. Climate change and territorial effects on regions and local economies
    - 1.5. Effects of rising energy prices on regional competitiveness
    - 1.6. Territorial Impact Assessment of policies

2. Calls for Interest and ideas of stakeholders for using targeted analysis based on ESPON results.

18) Concept on the Establishment of the European Spatial Planning Observatory Network (ESPON), Draft for the Committee for Spatial Development meeting to be held in Brussels, 25 November 1997.

3. Calls for Proposals on the ESPON 2013 database.

4. Calls for Interest in the Knowledge Support System creating a pool of experts in the field of territorial research and analysis.

On 20th August 2008, a second round of calls of proposals (deadline: 15th October 2008, selection: December 2008) has been published, focusing on the following themes:

1. Calls for Proposals on Applied Research Projects
    1.1. Climate Change and Territorial Effects on Regions and Local Economies [1 million EUR]

2. Calls for Proposals on Targeted Analysis Based on User Demand
    2.1. The Case for Agglomeration Economies in Europe [200.000 EUR]
    2.2. The Development of the Islands – European Islands and Cohesion Policy [250.000 EUR]
    2.3. Cross-Border Polycentric Metropolitan Regions [250.000 EUR]
    2.4. Success for Convergence Regions' Economies [200.000 EUR]
    2.5. Potential of Rural Regions [210.000 EUR]
    2.6. Spatial Scenarios: New Tools for Local-Regional Authorities [180.000 EUR]
    2.7. Transnational Support Method for European Cooperation [150.000 EUR]
    2.8. Territorial Diversity [210.000 EUR]

3. Calls for Proposals on the Scientific Platform and Tools

4. Territorial Indicators and Indices

It should be again noted, that EU Candidate Countries and Neighbouring States have the possibility to join the ESPON programme as observers as well as full partners, becoming Partner States within the Programme. At the moment Romania has expressed an interest in joining the programme as observer.

9.2.3 Urban Audit

A related statistical activity under the name Urban Audit is being undertaken directly by the Commission and coordinated by Eurostat, involving all national statistical offices and some of the cities directly. The objective of the Urban Audit is to address the lack of comparable data and fragmentation of sources by creating a single database with standardised and harmonised data on European cities.

The first full-scale statistical collection of data has been carried out for the reference year 2003, collecting data from cities in the EU-15 countries. In 2004, this has been extended to EU-25+3 (including Bulgaria, Romania and Turkey) where data from 258 cities have been collected. In the current referential period, the second full-scale collection is being carried out in EU-27+3 countries (including Norway, Switzerland, and Turkey) from 321 cities.

The data are collected at three spatial levels:
- Larger urban zone (city and surrounding areas – functional urban region);
- City limits (political boundaries);
- Sub-city districts.

The results are published by the Commission to be used by city leaders and local policy makers, in a set of different publications
- City Profiles
- How do the cities rank?
- How does your city compare?
- What is the structure of the city?
- Raw data sets.

The Urban Audit collects data for over 250 indicators across the following domains:
- Demography
- Social Aspects
- Economic Aspects
- Civic Involvement
- Training and Education
- Environment
- Travel and Transport
- Information Society
- Culture and Recreation

The Urban Audit generates large amounts of valuable data, which would not have been available through a less coherent methodology. Moreover, the Commission has also published an *Urban Audit Methodological Handbook*[19] which enables also non-participating cities, or cities from accession and neighbouring countries to perform self-evaluation and comparisons in some or all of the datasets in the collection categories.

9.2.4 Integration of urban and territorial policies

A comparably large dossier of activities related to urban planning and development, implemented through the intergovernmental coordination process, concerns the integration of two strands of development policies:

- Territorial development policy – in the form of the *Territorial Agenda of the European Union*[20]*;*
- Integrated urban development policy – in the form of the *Leipzig Charter on Sustainable European Cities*[21]*;*

19) Urban Audit – Methodological Handbook, European Communities 2004.
20) Territorial Agenda of the European Union: Towards a More Competitive and Sustainable Europe of Diverse Regions, Informal Ministerial Meeting on Urban Development and Territorial Cohesion, Leipzig, Germany, 24–25 May 2007.
21) Leipzig Charter on Sustainable European Cities, Informal Ministerial Meeting on Urban Development and Territorial Cohesion, Leipzig, Germany, 24–25 May 2007.

Territorial Agenda of the EU

Adopted in 2007 in Leipzig, Germany, under the German presidency of the Council, this document with a subtitle *Towards a More Competitive and Sustainable Europe of Diverse Regions,* presents a joint declaration of Ministers responsible for urban development and territorial cohesion. It is an action-oriented political framework for future cooperation between the EU Member States in support of the Lisbon strategy (growth and jobs) and Göteborg strategy (sustainable economic and social development) towards sustainable economic growth and job creation as well as social and ecological development in all EU regions.

Later in 2007, the *First action programme for the implementation of the Territorial Agenda of the European Union*[22] has been adopted under the Portuguese presidency of the Council. It is designed to be implemented in the 2007–2011 time-frame in the context of the informal cooperation on territorial cohesion between the Member States and the European Union.

Leipzig Charter on Sustainable European Cities

Adopted in at the same informal ministerial meeting in Leipzig, the Leipzig Charter outlines principles and strategies for urban development policy through a set of policy recommendations around four main priorities:

- Creating and ensuring high-quality public spaces
- Modernizing infrastructure networks and improving energy efficiency
- Proactive innovation and education policies
- Special attention to deprived neighbourhoods

Both the Territorial Agenda – including its First Action Programme – and the Leipzig Charter on Sustainable European Cities are open political frameworks adopted at informal ministerial meetings, outside of the Council and they do not preclude participation by non-member states, such as candidate or neighbouring countries. The implementation of both frameworks is equally based on a voluntary intergovernmental cooperation and is already under observation by Croatia and Turkey.

9.3 NOTE

A selection has been presented in this document with particular relevance for local and regional policy- and decision-makers in the European Union's accession and neighbouring countries. Some of the instruments or activities (the European Parliament's "Intergroup URBAN-HOUSING", the Commission's Interservice Group "Urban Development" and its

[22)] First action programme for the implementation of the Territorial Agenda of the European Union, Informal Ministerial Meeting on Spatial Planning and Development, Ponta Delgada, Azores, 23–24 November 2007.
[23)] The Urban Dimension in Community Policies for the period 2007–2013, European Commission, 24 May 2007.

comprehensive Guide to the *Urban Dimension in Community Policies*[23] etc.) have been omitted, either due to their irrelevance for this target group or due to their complexity in comparison to the extent of this document. Instead, more attention has been given to those instruments and activities, which could be directly used in the towns and municipalities of non-member countries.

Chapter 10 FRAMEWORK CONDITIONS FOR LOCAL GOVERNMENTS IN THE ENERGY SECTOR

FRAMEWORK CONDITIONS FOR LOCAL GOVERNMENTS IN THE ENERGY SECTOR

Paulis Barons – Latvian Association of Local and Regional Governments, adviser on energy issues, Riga

Environmental The 21st century started with considerable changes in energy supply, price increases of primary energy resources, a rising dependence on energy import as well as understanding the impact on environment from energy transformation. The EU and the world are at the cross-road concerning the future of energy policy. Following Lisbon strategy EU directives point out the main tendencies for sustainable development of the energy sector.

10.1 LEGAL FRAMEWORK

In order to deal with the new challenges in the energy sector, to establish a fully competitive internal energy market, as well as to achieve main EU economic, social and environmental objectives, the Commission launched the Green Paper *A European Strategy for Sustainable, Competitive and Secure Energy* (COM(2006) 105 final).

In the Green Paper, the Commission puts forward concrete proposals in six priority areas for implementing a European energy policy. Ranging from the completion of the internal market through to the implementation of a common external energy policy, these proposals should help Europe to ensure a supply of energy which is secure, competitive and sustainable for decades to come.

Local government should estimate the structure of the energy sector and consider the diversity of resources to obtain strategic goal defined by the Commission's Green Paper. The defined targets for 2020 are:

- reduce energy consumption by 20 percent;
- use 20 percent of renewable sources in energy generation;
- shorten CO_2 emissions by 20 percent.

On 10th January 2007 the Commission published its Communication *An Energy Policy for Europe* (COM (2007) 1 final), introducing a complete set of energy policy measures ("energy" package). Among other activities and measures, it encourages enlarging the targets for CO_2 emissions reduction up to 30 percent, and encourage the implementation of aid schemes for the most vulnerable citizens in the face of increasing energy prices and also the improvement of the level of information consumers receive concerning the different suppliers and supply options.

Based on the Energy Package, the Heads of State and Government at the spring European Council on 9th March 2007 adopted a comprehensive energy Action Plan for the period 2007–2009.

10.1.1 Electricity

Europe is importing over 50 percent of energy resources, which creates serious economic problems as well as leads to political dependency and bondage. The Directive 2003/54/EC (repealing Directive 96/92/EC), establishes definitions of the electricity sector in general and makes clearer energy market regulations for electricity generation, transfer and distribution. It lays down the rules relat-ing to the organisation and functioning of the electricity sector and access to the market and the criteria and procedures applicable to calls for tenders and the granting of authorisations and the operation of systems.

The measures for safeguarding the security of electricity supply and infrastructure investments are laid down in the Directive 2005/89/EC.

10.1.2 Gas

EC Directive 2003/55/EC concerning common rules for the internal market in natural gas is focussed on rules for transmission, distribution, supply and storage of natural gas – main energy source for heat supply. It regulates the organisation and functioning of the natural gas sector, as well as access to the market (defines targets for the liberalization of the national gas and electric-ity markets). Furthermore, it establishes criteria and procedures applicable to the granting of authorisations for transmission, distribution, supply and storage of natural gas and the operation of systems. Directive 2003/55/EC applies to any kind of gas, e.g. biogas or gas from biomass.

10.1.3 Energy Efficiency

Green Paper on Energy Efficiency *Doing More with Less* (COM (2005) 265) recognizes the need to improve energy efficiency for environmental, security of supply and competitive reasons. The main idea is to save energy and obtain its efficient use at all stages – in the transformation process of primary energy sources into other energy forms (heat, electricity, force), in transmission of resources and energy, in distribution systems and in the final stage – use of all kind of energy (heat, transport fuel, lighting, electricity).

Directive 2002/91/EC on Energy performance in buildings concentrates on methodology, certification and requirements with regard to the energy performance of new, large existing buildings (to be renovated). It also concerns public buildings and dwelling houses, which in most cases are under the management of local governments.

Directive 2006/32/EC on Energy end-use efficiency and energy services and repealing gives guidelines for standardized format of national (as well as the regional and local) energy efficiency action plans.

Cogeneration is one of the main instruments for raising efficiency of primary energy sources transformation into heat and electricity. Directive 2004/8/EC envisages main requirements for support and development of high efficiency cogeneration of heat and power based on useful

heat demand and primary energy savings in the internal energy market, also regarding the local heat supply.

Directive 2005/32/EC creates system of efficiency requirements on all goods and products consuming energy in EU market.

10.1.4 Renewable Energy

The EU's increasing dependence on energy imports (natural gas, oil products, coal, nuclear materials) threatens its security of supply and implies higher prices. Recent studies have contributed to growing awareness and knowledge of the problem and its long-term consequences, and have stressed the need for decisive and immediate action. The EU has launched wide programs for intensification of local and renewable energy (RE) resources (wind, hydro, tides and waves, wood, peat, solar etc.) use.

The European Commission's **White Paper for a Community Strategy** (COM(97)599 final)sets out a strategy to double the share of renewable energies in gross domestic energy consumption in the European Union by 2010 (from the present 6 percent to 12 percent) including a timetable of actions to achieve this objective in the form of an Action Plan. The main features of the Action Plan include internal market measures in the regulatory and fiscal spheres; reinforcement of those Community policies which have a bearing on increased penetration by renewable energies; proposals for strengthening cooperation between Member States; and support measures to facilitate investment and enhance dissemination and information in the renewables field.

The Renewable Energy Road Map (COM (2006)848 final) defines a long term vision for RE in the EU. It proposed the EU binding target of 20 percent for RE share of energy consumption in EU by 2020 and a binding 10 percent target for the RE in transport petrol and diesel.

Directive 2001/77/EC defines indicative goals (percent of national consumption) for all countries till 2010 for use of RE for generation of electricity. New directive on the promotion of the use of energy from renewable sources will be adopted at the end of 2008.

10.1.5 Emissions

Traditional primary energy resources – fossil fuels (coal, natural gas, oil) by transforming into other form of energy creates emissions causing global warming, main of them – CO_2. The Directive 2003/87/EC (amended by Directive 2004/101/EC) establishes a Community greenhouse gas emission trading scheme (ETS). The ETS will be in force until 2012.

ETS is a centralised EU instrument for managing emissions and should be considered by local governments. Active discussions about gains and losses of EU ETS in all EU countries show the urgency of this subject and will lead to a more efficient upcoming system for period after 2012.

10.2 IMPACT ON LOCAL LEVEL

The energy sector in economy grows faster (in quantity and value) than GDP and is one of the main challenges for politicians and municipal officers. Contrary to global tendencies to centralize economical systems in energy generation and supply progress, the decentralization should be facilitated, obtaining minimization of losses and increasing safety and reliability of supply. As for example in Latvian case the limited privatization in the heat supply systems facilitated the formation of inefficient and costly centralized systems.

The EU Directives mentioned above should be taken as guidelines and recommendations for correct action. But the implementation of requirements demands certain amounts of financial resources and administrative capacity, which for local governments in most cases is not sufficient. This leads to the necessity for a structured approach. In order to increase the effectiveness and efficiency of the implemented steps in the field of energy, representatives of local governments should identify priorities, taking into account the current situation and local conditions.

To exclude subjective decisions the first step is to make a professional energy audit for a specific object (house, village, town, and region). The second step is to develop long term policy and short term action plans, considering technical and economical facilities.

Private Public Partnership can be considered as an effective way of service provision for citizens. But in order to ensure energy efficient and sustainable spatial planning it is recommended that the dominating share in energy distribution systems is owned by municipalities.

Energy efficiency in buildings is one of the main challenges to strengthen and consolidate society for sustainable and comfortable living conditions.

10.3 LESSONS LEARNED – LATVIAN CASE

Latvia is a country importing about 80 percent of primary energy resources – all oil products, natural gas and coal and 1/3 of electricity. In the transition period some erroneous steps have been taken hindering the process of the progress. Support to natural gas as main energy source for space heating moved the foreign GAZPROM Company in monopoly position thus leading to political dependency of the country, which was deepened by the lack of support for the use of local and renewable energy sources.

Stressing on interests of energy generation and supply enterprises and ignoring the energy efficiency problems and the distribution of state and EU support led to high energy consumption levels and tariffs and created social problems.

Chapter 11 ENVIRONMENT: EU-ACQUIS COMMUNAUTAIRE CONCERNING THE LOCAL AND REGIONAL LEVEL

ENVIRONMENT: EU-ACQUIS COMMUNAUTAIRE CONCERNING THE LOCAL AND REGIONAL LEVEL[1]

Ilze Ciganska – Latvian Association of Local and Regional Governments, Riga
Thomas Prorok – KDZ – Centre for Public Administration Research, Vienna

Environmental policy is one of the most important and far-reaching areas of EU legislation. The EU environmental legislation includes several hundred legal acts. Most are directed towards a special medium sector, such as water, air, nature, waste, and chemicals. Other deals with cross cutting issues, e.g. access to environmental decision-making. Implementation of the policy is among the most complex and expensive tasks Member states have to face.

In broad terms, the EU environmental policy aims at facilitation of sustainable development, which takes into account the present needs without jeopardising the development possibilities of future generations. This means that short term economic gains at the expenses of the environment should be replaced by a more sustainable model of economic and social development, which may constitute the basis for greater efficiency and competitiveness, both at a Union level and internationally.

A new stage in the development of the EU environmental policy was reached with the adoption of the Sixth Environment Action Programme (Decision No 1600/2002/EC), which represented a step in the direction of integrated environmental policies. One of the initiatives in the EAP was the development of thematic strategies covering seven areas, all of them prepared in 2005 and 2006. The areas are:

- Air Pollution (adopted 21/09/2005);
- Prevention and Recycling of Waste (adopted 21/12/2005);
- Protection and Conservation of the Marine Environment (adopted 24/10/2005);
- Sustainable use of Pesticides (adopted 12/07/2006);
- Soil (adopted 22/09/2006);
- Sustainable Use of Resources (adopted 21/12/2005);
- Urban Environment (adopted 11/01/2006).

The Thematic Strategies represent the next generation of environment policy – they work with specific policy areas rather than with pollutants or economic activities, as has been the case in past. The Strategies set long term environmental objectives to around 2020, and so providing a stable policy framework. The new approach is focused on identifying the most appropriate instruments to deliver European policy goals in the least burdensome and most cost-effective way possible. Legislation is one such instrument; others are economic support, research, and stakeholder agreements, etc.

[1)] This article is based on the LOGON Final Guide 2005, chapter “Implementing the EU acquis at local and regional level – EU directives and regulations” edited by Guido Dernbauer and Martin Loga. This chapter has been reviewed and actualised by Ilze Ciganska and Thomas Prorok 2008.

Implementation and enforcement of environmental legislation is often delegated to regional or local authorities or other institutions responsible for monitoring, issuing of permits and inspection. In many cases, the work of these bodies will be seriously affected by the new legislation, with additional obligations requiring more efficient management and additional staff training. The development of regional and local environmental administration will need specific attention in all countries which might be joining the EU in the future.

But there are still remaining gaps in knowledge towards environmental EU legislation. They result from inadequate and weak communication structures and national governments withholding this information from the local level. Even if national governments do have the necessary information, transfer to local authorities does not always occur. This can be attributed to a number of reasons, such as lack of appropriate resources, lack of staff, poor targeting of information, lack of respon-sibility of local authorities in these fields and low overall attention to the issue.

The main legal acts in specific policy areas will be described in the following subchapters. The text is based on the Commission DG Environment website **http://ec.europa.eu/environment/policy_en.htm.**

11.1 WASTE MANAGEMENT

The European Commission proposed on 21st December 2005 (COM(2005) 666 final) a new strategy on the prevention and recycling of waste, which is a part of the 6th Environmental Action Plan. It aims to help Europe to become a recycling society that seeks to avoide waste and use waste as a resource. It will draw on the knowledge that the thematic strategy on resources, also adopted on 21st December 2005, will generate.

The overall structure for an effective waste management regime is set out in the Waste Framework Directive, the complementary Hazardous Waste Directive and Regulation on the shipment of waste. These directives establish the framework for waste management structures, which has been elaborated by two types of “daughter” directives: one group sets down requirements for the permitting and operations of waste disposal facilities. The other group deals with specific types of waste such as oils, packaging and batteries.

Waste framework – Overview on the EU Waste Management System

- Waste Framework Directive (75/442/EEC codified by Directive 2006/12/EC)
- Hazardous Waste Directive (91/689/EEC)
- Shipment of waste (Regulation 1013/2006/EC)

Special wastes

- Waste Electrical and Electronic Equipment (2002/96/EC amended by 2003/108/EC)
- Packaging (94/62/EC)
- Waste Oils (75/439/EEC)
- PCB's and PCT's (96/59/EC)

- Batteries (2006/66/EC)
- Sewage Sludge (86/278/EEC)
- Incineration of waste (2000/76/EC)
- End-of-life vehicles (2000/53/EC)
- Landfill (99/31/EC)

Waste statistics

- Regulation 2150/2002/EC on waste statistics

Therefore, the following statutory documents of the European Union are of main importance for local authorities with respect to waste:

Waste Framework Directive (2006/12/EC)

The first Waste Directive was adopted in 1975. A new codified Waste Framework Directive (2006/12/EC) now replaces the old directive, as a legal text that replaces all the previous versions and their amendments without any legal or political changes. In parallel the Commission has published a proposal for substantial revision if the Directive to merge, streamline and clarify the waste legislation and contribute to a better regulation (Waste Com (2005)667 final). On 17th June 2008, the European Parliament adopted a **legislative resolution** in which it approves the Council's Common Position as amended. According to the EC Treaty, the Commission is now required to deliver an opinion on the European Parliament's amendments.

The directive aims at protecting human health and the environment against negative effects of the collection, transport, treatment and disposal of waste. As there is no blueprint which solves everything, the EU works with a set of principles:

- Prevention: waste production must be reduced and avoided where possible
- Recycling and Re-use should be promoted (many of the materials as possible should be recovered)
- Polluter pays: those who generate waste pay the full cost of their actions
- Precautionary: rather than waiting for problems to appear, they need to be anticipated
- Proximity: waste should be dealt with as close as possible to where it is produced.

National competent authorities under the directive must draw up one or more waste management plans, covering the wastes to be recovered or disposed of, technical requirements, special arrangements for particular wastes, and suitable disposal sites or installations. They also have to implement necessary measures, in cooperation with other Member States where it is necessary or advisably, to establish an adequate network of disposal institutions, thus enabling the individual State and Community as a whole to become self-sufficient in waste disposal. The national authorities also serve as the permit authorities for establishments carrying out disposal or recovery operations.

The requirements do not apply to gaseous effluents, or to radioactive waste, mineral waste, animal carcases and agricultural waste, waste water, and decommissioned explosives where these types of waste are subject to specific Community rules.

Hazardous Waste Directive (91/689/EEC)

The principal aim of the directive is to formulate a common definition of hazardous waste and introduce greater harmonisation of the management of such waste. It lists hazardous wastes, constituents and properties which render waste hazardous. Establishments which carry out their own waste disposal will need a license. Hazardous waste management plans have to be published by the competent authorities, either as part of the general waste management plan (according to 75/442/EEC) or separately. The competent authorities must inspect installations producing and receiving hazardous waste as well as means of transporting the waste. Stricter control procedures such as inspection of installations are also required. The directive is further specified by the Waste List Decision 2000/532/EC as last amended by Decision 2001/573/EC (establishes the list of waste).

Waste Shipment Regulation (1013/2006/EC)

This Regulation applies to the supervision and control of shipment of waste within, into and out of the European Union and establishes procedures and control regimes for the shipment of waste, depending on the origin, destination and route of the shipment, the type of waste shipped and the type of treatment to be applied to the waste at its destination. In the case of shipments of waste for disposal, Member States should take into account the principles of proximity.

The aim of this Regulation is to reinforce, simplify and specify the existing procedures for controlling waste shipments.

Member States must identify the appropriate competent authority or authorities to control the movement of wastes under the regulation, as well as establish an appropriate system for the supervision and control of shipments of waste exclusively within their jurisdiction. Member States shell provide all the related information to the Commission as well as to the public (as regards the later – as long as the information is not treated as confidential).

The Regulation foresees certain transition arrangements for Latvia, Poland, Slovakia, Bulgaria and Romania.

The so called ‘daughter’ directives can be divided into directives setting requirements for specific waste streams and those setting requirements for disposal facilities:

11.1.1 Special wastes

Directive on Waste Electrical and Electronic Equipment (2002/96/EC amended by Directive 2003/108/EC)

This directive aims at the prevention of electrical and electronic equipment waste (WEEE) as a first priority. Secondly, it is focussed on recycling and other forms of recovery of such wastes in order to reduce the disposal of waste. It also seeks to improve the environmental performance of all operators involved in the life cycle of electrical and electronic equipment (e.g. producers).

Packaging and Packaging Waste (94/62/EC)

The Packaging Directive prescribes recycling quotas (regarding both the material itself and through incineration) for packaging waste (50 to 65 percent in weight) as well as material recycling quotas (25 to 45 percent in weight, at least 15 percent for each material). This presupposes organising the separate collection and recycling of this waste, which has to be organised (and paid for) by local authorities. Packaging waste is usually collected by private companies and in some cases by the municipalities themselves. Existing systems would have to be assessed to ensure compliance with EU requirements and avoid distortions of the free market. Article 6, paragraph 1 of Directive 94/62/EC prescribes quotas regarding incineration, recycling and recovery to be attained by Member States until fixed dates.

Amongst others the following targets are set:

- Until 31st December 2008 as a minimum 60 percent by weight of packaging waste must be recovered or incinerated at waste incineration plants with energy recovery.
- Between 55 per cent as a minimum and 80 percent as a maximum by weight of packaging waste must be recycled until 31st December 2008 at the latest.
- Specific recycling quotas by weight for metals (50 percent), glass (60 percent), paper and board (60 percent), wood (15 percent) and plastics (22.5 percent) must be attained until by 31st December 2008 at the latest. Paying attention to the situation of Member States that joined the EU on 1st May 2004 there are some exceptions regarding the achievement of recycling quotas. These Member States need an additional span of time to fully adapt the acquis communautaire concerning the environment. Exceptions are laid down in Directive 2005/20/EC amending Directive 94/62/EC.

Directive **2005/20/EC** sets a later deadline for the 10 new Member States (the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, Slovakia) to meet the targets of the revised Packaging Directive. The extensions are until 31st December 2012.

Disposal of Waste Oils (75/439/EEC)

This directive aims to create a harmonised system for the collection, treatment, storage and disposal of waste oils; Member States must ensure the safe collection and disposal of waste oils. Adequate disposal structures and strict control procedures have to be put in place in order to avoid illegal or inadequate disposal of waste oils.

Disposal of PCB's and PCT's (96/59/EC)

This directive aims at the elimination of PCB's and PCT's and at the decontamination of equipment containing them. Strict regulations and enforcing instruments have to be created or strengthened in order to ensure the enforcement of the requirements of the directive. Member States have to make an inventory of big equipment containing PCBs, have to adopt a plan for disposal of inventoried equipment, and outlines for collection and disposal of non inventoried equipment (small electrical equipment very often present in household appliances manufactured before the ban on marketing of PCBs).

Furthermore, the Commission has adopted a Community Strategy on Dioxins, Furans and PCBs aimed at reducing as far as possible the release of these substances in the environment and their introduction in the food chains. In addition, Regulation (EC) No 850/2004 on persistent organic pollutants covers PCB. The Commission has carried out a study to facilitate the implementation of the waste related provisions of this Regulation.

Batteries and Accumulators and Waste Batteries and Accumulators (Directive 2006/66/EC repealing Directive 91/157/EEC and amended by Directive 2008/12/EC, as regards the implementing powers conferred on the Commission)

The Directive prohibits the placing on the market of certain batteries and accumulators with a proportional mercury or cadmium content above a fixed threshold. In addition, it promotes a high rate of collection and recycling of waste batteries and accumulators. The aim is to cut the amount of hazardous substances dumped in the environment; this should be done by reducing the use of these substances in batteries and accumulators and by treating and re-using the amounts that are used.

The Directive applies to all types of batteries and accumulators, apart from those used in equipment to protect Member States' security or for military purposes, or in equipment designed to be sent into space. It therefore covers a wider range of products than Directive 91/157/EEC, which applied only to batteries containing mercury, lead or cadmium, and excluded "button cells".

To ensure that a high proportion of spent batteries and accumulators are recycled, Member States must take whatever measures are needed (including economic instruments) to promote and maximise separate waste collections and prevent batteries and accumulators being thrown away as unsorted municipal refuse. They have to make arrangements enabling end-users to discard spent batteries and accumulators at collection points in their vicinity and have

them taken back at no charge by the producers. Collection rates of at least 25 percent and 45 percent have to be reached by 26th September 2012 and 26th September 2016 respectively. Member States also have to ensure that, from 26th September 2009 at the latest, batteries and accumulators that have been collected are treated and recycled using the best available techniques. Recycling must exclude energy recovery.

Sewage Sludge used in Agriculture (86/278/EEC)

The directive aims to control the use of sewage sludge in agriculture by establishing maximum limit values for concentrations of heavy metals in the soil and in the sludge, and maximum quantities of heavy metal (cadmium, copper, nickel, lead, zinc and mercury) which may be added to the soil. The authorities responsible for water treatment, waste management, agriculture and enforcement will need to work together to achieve the aims of the directive. A proposal for either a revised or a new directive to repeal 86/278/EEC is expected to be presented by the Commission at the end of 2005.

11.1.2 Processing and disposal facilities

Incineration of Waste (2000/76/EC)

The aim of this directive is to prevent or to limit as far as practicable negative effects on the environment, in particular pollution by emissions into air, soil, surface water and groundwater, and the resulting risks to human health, from the incineration and co-incineration of waste. This aim shall be met by means of stringent operational conditions and technical requirements, through setting emission limit values for waste incineration and co-incineration plants within the Community and also through meeting the requirements of Directive 75/442/EEC.

Directive 89/429/EEC (Emission limit values of existing municipal waste incineration plants) and Directive 89/369/EEC on new municipal incineration plants shall only be mentioned here. Both will be repealed on 28th December 2005 by Directive 2000/76/EC. Furthermore, Directive 94/67/EC on the incineration of hazardous waste will be repealed that day, too.

End-of-life Vehicles (2000/53/EC)

This directive lays down measures which aim, as a first priority, at the prevention of waste from vehicles and, in addition, at the reuse, recycling and other forms of recovery of end-of-life vehicles and their components so as to reduce the disposal of waste, as well as at the improvement in the environmental performance of all of the economic operators involved in the life cycle of vehicles and especially the operators directly involved in the treatment of end-of-life vehicles.

Landfill Directive (99/31/EC)

This directive intends to prevent or reduce the adverse effects of the landfill of waste on the environment, in particular on surface water, groundwater, soil, air and human health. It defines

the different categories of waste (municipal waste, hazardous waste, non-hazardous waste and inert waste) and applies to all landfills, defined as waste disposal sites for the deposit of waste onto or into land. A standard waste acceptance procedure is laid down so as to avoid any risks:

- waste must be treated before being land-filled;
- hazardous waste within the meaning of the directive must be assigned to a hazardous waste landfill;
- landfills for non-hazardous waste must be used for municipal waste and for non-hazardous waste;
- landfill sites for inert waste must be used only for inert waste.

The directive sets up a system of operating permits for landfill sites. Applications for permits must contain the following information:

- the identity of the applicant and, in some cases, of the operator;
- a description of the types and total quantity of waste to be deposited;
- the capacity of the disposal site;
- a description of the site;
- the proposed methods for pollution prevention and abatement;
- the proposed operation, monitoring and control plan;
- the plan for closure and aftercare procedures;
- the applicant's financial standing;
- an impact assessment study, where required, under Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.

Member States must ensure that existing landfill sites may not continue to operate unless they comply with the provisions of the directive as soon as possible. Member States must report to the Commission every three years on the implementation of the directive. On the basis of these reports, the Commission must publish a Community report on the implementation of the directive. Local and regional authorities have a major role to play in implementing this directive and in reporting to their national authorities. Additionally the issue of transport, import and export of waste is dealt with under a specific Regulation.

Regulation on Waste Statistics (2150/2002/EC)

This Regulation establishes a framework for the production of Community statistics on the generation, recovery and disposal of waste. Member States and the Commission shall produce Community statistics covering the aforementioned topics.

11.2 WATER QUALITY – DRINKING WATER, WASTE WATER

Water is one of the most comprehensively regulated areas of EU environmental legislation. Early European water policy began already in the 1970s. Since then it had become clear that an efficient protection of water needs emission limit value legislation as well as water quality standards legislation, i.e. a so-called "combined approach". In the following you will find the main Community legislation in the field of water policy.

Directive 2000/60/EC (framework directive for community action in the field of water policy)

The hitherto use-oriented rules for water management were replaced by this comprehensive framework directive on water management. For the first time, emission and immission standards are combined with an ecological orientation (biological water quality). Principally, the new instrument provides cost-coverage prices for all forms of water use, including drinking water supply and wastewater. The idea behind this directive is that it forms the very basis of the European water strategy. It aims to bring considerable improvements in sustainable and integrated management of our water resources. For the first time it covers, in a single legal text, all types and uses of water. It repeals no less than six existing European water directives (dangerous substances; surface water; fish water; shellfish water; groundwater and information exchange).

The purpose of this directive is to establish a framework in order to achieve the following four main objectives of a sustainable water policy:

- sufficient provision of drinking water;
- sufficient provision of water for other economic requirements;
- protection of the environment;
- alleviation of the adverse impact of floods and droughts.

Member States will have to ensure that services to water users are paid at full cost recovery prices (basically prices for water supply and waste water collection and treatment). The programme of measures will have to be based on all relevant water-related legislation, be it Community, national, regional or local legislation and will have to be legally binding.

With the Framework Directive, the European Commission follows the pattern it has established in the fields of waste and air quality which are also governed by a single integrated framework directive supported by a series of technical directives setting specific limitations and requirements.

On 22th/23th March 2007, the Commission organised a conference where more than 400 participated were discussing the **first implementation report** and the launch of the **Water Information System for Europe (WISE).**

Groundwater Directive (2006/118/EC)

The new Groundwater Directive (2006/118/EC) establishes a regime, which sets underground water quality standards and introduces measures to prevent or limit inputs of pollutants into groundwater. The directive establishes quality criteria that takes account local characteristics and allows for further improvements to be made based on monitoring data and new scientific knowledge. The directive thus represents a proportionate and scientifically sound response to the requirements of the Water Framework Directive as it relates to assessments on chemical status of groundwater and the identification and reversal of significant and sustained upward trends in pollutant concentrations. Member States will have to establish the standards at the most appropriate level and take into account local or regional conditions.

The groundwater directive requires groundwater quality standards to be established by the end of 2008. Pollution trends should be studied using so-called “baseline level” data obtained in 2007–2008, and prevent or limit inputs of pollutants into groundwater to allow environmental objectives – compliance with good chemical status criteria – to be achieved by 2015. as in the WFD the reviews of technical provision of the directive should be carried out in 2013 and every six years thereafter.

Drinking water Directive (98/83/EC)

This directive aims at protecting and securing the quality of drinking water throughout the EU. The directive obliges Member States to supervise the quality of water. They regularly have to check its quality by considering the analytical methods in accordance to this directive to guarantee common standards. After a period of three years each member state is obliged to report on the quality of drinking water to the Commission and to inform the consumers that the quality is compliant with EU standards.

There are exceptions for Estonia concerning the values set for the indicator parameters colour, hydrogen ion concentration, iron manganese, odour and turbidity. These values need not be applied for distribution systems until 31st December 2007 (serving more than 2.000 persons) and accordingly until 31st December 2013 (serving 2.000 or fewer persons). Values set for the indicator parameters chloride, conductivity and sulphate must be attained until 2008 and 2013. These exceptions are codified in the annex to the Act of Accession 2003 regarding Estonia.

The Act of Accession 2005 regarding Romania also sets exceptions for Romania regarding the chemical and indicator parameters:

- until 31st December 2010 for oxidisability in agglomerations with less than 10.000 inhabitants;
- until 31st December 2010 for oxidisability and turbidity in agglomerations with between 10.000 and 100.000 inhabitants;
- until 31st December 2010 for oxidisability, ammonium, aluminium, pesticides, iron and manganese in agglomerations with more than 100.000 inhabitants;

- until 31st December 2015 for ammonium, nitrates, turbidity, aluminium, iron, lead, cadmium and pesticides in agglomerations with less than 10.000 inhabitants;
- until 31st December 2015 for ammonium, nitrates, aluminium, iron, lead, cadmium, pesticides and manganese in agglomerations with between 10.000 and 100.000 inhabitants.

Romania shall ensure compliance with the requirements of the Directive, in accordance with the intermediate targets.This derogation does not apply to drinking water intended for food processing.

In order to adapt the Directive to progress in science and technology and to address the changed context met after the enlargement of the Union, the Commission is working on the revision of the Directive. The third Consultation with the stakeholders took place on 6st May 2008.

Bathing Water Directive (76/160/EEC repealed by Directive 2006/7/EC) on the quality of bathing waters seeks to ensure the quality of bathing water throughout the EU, both for fresh water and coastal water bathing areas. Member States have to take all appropriate measures in order to comply with the mandatory quality standards laid down in the Directive.

Directive 76/160/EEC is repealed by Directive 2006/7/EC with effect from 31st December 2014. This Directive will replace the former Directive when it will be transposed by the Member States. It will have to be put into effect at the latest at the start of 2008.

The water concerned is surface water that can be used for bathing except for swimming pools and spa pools, confined waters subject to treatment or used for therapeutic purposes and confined waters artificially separated from surface water and groundwater.

The Directive lays down two parameters for analysis (intestinal enterococci and escherichia coli) instead of nineteen in the previous Directive. These parameters will be used for monitoring and assessing the quality of the identified bathing waters and for classifying them according to their quality. Other parameters may possibly be taken into account, such as the presence of cyano-bacteria or microalgae.

Member States must monitor their bathing waters. They should assess their bathing waters at the end of every season on the basis of the information gathered during that season and the three preceding ones in principle. Following the assessment, the waters are classified, in accordance with certain specific criteria, in one of four quality levels: poor, sufficient, good or excellent. The category “sufficient” is the minimum quality threshold that all Member States should attain by the end of the 2015 season at the latest. Where water is classified as “poor”, Member States should take certain management measures, in particular banning bathing or posting a notice advising against it, providing information to the public, and suitable corrective measures.

Member States should also determine the profile of bathing waters, including in particular a description of the area concerned, any sources of pollution and the location of the water

monitoring points. The profile should be ready by the start of 2011 at the latest and may be revised if a change occurs that is likely to affect the water.

Directive on the quality of fresh waters needing protection or improvement in order to support fish life (2006/44EC) seeks to protect and/or improve those fresh water bodies identified by Member States as fish waters. It sets water quality standards for salmonid waters and cyprinid waters. Directive 78/659/EEC will be repealed at the end of 2013 due to a provision of Directive 2000/60/EC.

The Shell Water Directive (2006/113/EC) seeks to protect those coastal and brackish water bodies identified by Member States as shellfish waters. For those it sets water quality standards. It will be repealed at the end of 2013 due to a provision of Directive 2000/60/EC.

Urban Waste Water Directive (91/271/EEC)

This directive aims to protect surface inland waters and coastal waters by regulating collection and treatment of urban waste water and discharge of certain biodegradable industrial waste water (basically from the agro-food industry). All municipalities with more than 15.000 inhabitants (until the end of 2000) and more than 10.000 inhabitants (until the end of 2005) must dispose of secondary treatment facilities, i.e. a biological purification process. 2005 is furthermore the deadline for the introduction of secondary wastewater treatment for all municipalities with 2.000 to 10.000 inhabitants whose wastewater is emitted into inland waters (or estuaries).

More advanced treatment is required for so-called sensitive areas (i.e. water bodies subject to eutrophication or in danger to become so). For certain marine waters, primary, mechanical treatment might be sufficient, provided it can be proved that the water quality is not adversely affected.

In cooperation with their national governments, cities and regions need to

- identify agglomerations, which need a sewerage system and/or a treatment plant or its improvement,
- establish a phased implementation programme for sewerage and treatment systems,
- develop detailed capital investment strategies in order to cope with the expenditures needed to construct, improve or replace sewerage and/or treatment systems,
- assess costs for users, develop strategies for cost recovery (cf. also Water Framework Directive on full cost recovery),
- develop and implement strategies for the reuse and/or disposal of sewage sludge from waste water treatment, including where necessary the phasingout of discharge or dumping to waters,
- assess the need for training the necessary staff for maintenance of sewerage systems and treatment plants.

There are exceptions regarding the application of this directive by Member States that joined the EU on 1st May 2004, and on 1st January 2007. These are codified in the annexes to the

Act of Accession 2003 and Act of Accession 2005 concerning specific conditions of each country that acceded the Union. The annexes (one for each country) contain transitional provisions regarding the adoption of the acquis communautaire.

The provisions of this directive regarding collecting systems and the treatment of urban waste water need not be applied fully in Lithuania until 31st December 2009 and in Estonia until 31st December 2010. Several intermediate targets must be achieved. Furthermore, several provisions regarding the treatment of waste water must not fully be applied by Cyprus until 31st December 2012. Latvia, Slovakia, Poland, Slovenia and Hungary must ensure full compliance with the requirements regarding collecting systems and the treatment of urban waste water until 31st December 2015 at the latest, Bulgaria until 31st December 2014 and Romania unlit 31st December 2018. Several intermediate targets need to be attained until then by these countries.

Nitrates from Agricultural Sources Directive (91/676/EEC) concerning the protection of water against pollution caused by nitrates from agricultural sources, complements the Urban Waste Water Directive by reducing and preventing the nitrates pollution of water from agricultural sources, i.e. chemical fertiliser and livestock manure, both to safeguard drinking water supplies and to protect fresh water and marine waters from eutrophication.

Dangerous Substances Discharges Directive (2006/11/EC) on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community requires Member States to control all emissions of dangerous substances.

This Directive codifies and replaces Directive 76/464/EEC and its subsequent amendments. This codification leads to the clarification and rationalisation of legislation. It takes into account the adoption of the water framework Directive and the international conventions on the protection of water courses and the marine environment. The Directive lays down rules for protection against, and prevention of, pollution resulting from the discharge of certain substances into the aquatic environment. It applies to inland surface water, territorial waters and internal coastal waters.

To combat the pollution of these waters, two lists have been compiled of dangerous substances that need to be controlled:

- pollution caused by the discharge of substances in List I must be eliminated;
- pollution from the products in List II must be reduced.

The directive sets quality objectives and emission limit values, which are compulsory (List I) unless the Member States prove that the quality objectives are being met and continuously maintained. As regarding the substances mentioned in list II, the Member States should adopt and implement programmes to preserve and improve water quality.

The Act of Accession 2005 sets exceptions for Romania regarding the limit values for discharges of cadmium and mercury into the aquatic environment, shall not apply in Romania until 31st December 2009 to several industrial installations listed in the Annex VII of the Act of Accession.

Assessment and management of flood risks (Directive 2007/60/EC)

The Directive aims to establish a common framework for assessing and reducing the risk that floods within the EU pose to human health, the environment, property and economic activity. It covers all types of floods, both along rivers and in coastal areas. There are also other risks, such as urban floods and sewer floods, which must also be taken into account.

Member States must carry out a preliminary assessment of risks for each river basin district or part of a district located in their territory by 22nd December 2011 at the latest. This includes gathering information on the boundaries of river basins in the district concerned, floods that have occurred in the past, the likelihood of future floods and the estimated consequences. On the basis of the assessment, river basins have to be categorized according to whether or not they have a significant potential flood risk. This assessment and the resulting categories must be published and reviewed by 22nd December 2018. There also should be prepared maps identifying all areas posing a risk of flooding and indicating the probability (high, medium or low) of flooding for each of those areas and the potential damage for local populations, property and the environment (by 22nd December 2013 at the latest).

Member States must prepare and implement flood risk management plans for each river basin district. All parties concerned must be allowed to participate in an appropriate manner in preparing management plans. Where the area concerned extends into several countries, the Member States must cooperate in preparing, as far as is possible, a single management plan. These plans must be completed and published by 22nd December 2015. All the measures should be reviewed every six years.

11.3 SOIL PROTECTION

In response to concerns about the degredation of soil in the EU the Commission published in 16th April 2004 its Communication “Towards a thematic strategy for soil protection” [COM (2002) 179 final]. As a result of this release there have been several consultations by the Commission and six working groups were initiated. These working groups cover the following topics: erosion, organic matter, contamination, monitoring and research. An advisory forum was established, too. Resulting the consultation process the first steps towards the development of a Thematic Strategy were outlined: Communication form the Commission (COM(2006)231), giving the background for a high level of soil protection, and explaining measures what should be taken in ten-year work program; a proposal for a framework Directive determining common principles for soil protection; and an Impact Assessment.

11.4 URBAN ENVIRONMENT

The Commission adopted the Thematic Strategy on the Urban Environment on 11th January 2006. This is one of the seven thematic strategies of the **Sixth Environment Action Programme.** The Strategy is based on extensive consultation with stakeholders and builds on existing European policy initiatives for improving the quality of the urban environment. It sets out new measures to support and facilitate the adoption of integrated approaches to the management of the urban environment by national, regional and local authorities.

The aim of this strategy is to improve the quality of the urban environment by making cities more attractive and healthier places in which to live, work and invest, and by reducing their adverse environmental impact.
The main measures proposed in the strategy are as follows:

- publication of guidelines for the integration of environmental issues into urban policies;
- publication of guidelines for sustainable urban transport plans;
- support for the exchange of best practices, e.g. through the networking of information, the development of demonstration projects funded by LIFE+, and the establishment of a network of national focal points;
- broadening the range of information for local authorities via the Internet and of training on urban management issues for people working in regional and local government;
- drawing on the Community support programmes in the context of cohesion policy or research.

The cross-cutting nature of urban management issues means that any strategy for improving the urban environment needs to be coordinated with the other environmental policies concerned: including climate change policy (sustainable construction to improve energy efficiency, urban transport plans, etc.), protection of nature and biodiversity (reducing urban sprawl, converting industrial wastelands, etc.), quality of life and health (reducing air pollution and noise, etc.), sustainable use of natural resources and prevention and recycling of waste.

11.5 AIR QUALITY

The Sixth Environmental Action Programme includes air pollution as one of the issues under Environment and Health, were new efforts are considered necessary. The objective is to achieve levels of air quality that do not give rise to unacceptable impact on, and risk to, human health and the environment.

In 2001 the Commission launched a Programme called “Clean air for Europe” (CAFE), with its communication COM (2001) 245 final – “Towards a thematic strategy for air quality”. The aim of this programme is the development of an integrated long-term strategy in order to protect human health and the environment from significant negative effects by air pollution. The implementation of the Thematic Strategy (COM (2005) 446 final) started in September 2005. It establishes objectives for air pollution and proposes measures for achieving them by 2020: modernising the existing legislation, placing the emphasis on the most harmful pollutants,

and involving to a greater extent the sectors and policies that may have an impact on air pollution.The Council adopted unanimously the Council Conclusions on the Thematic Strategy in March 2006.

Directive 96/62/EC on ambient air quality assessment and management, known as the Air Quality Framework Directive, aims to set the basic principles of a common strategy which

- defines and establishes objectives for ambient air quality in the Union in order to avoid, prevent or reduce harmful effects on human health and the environment as a whole;
- assesses the ambient air quality in Member States on the basis of common methods and criteria;
- produces adequate publicly available information about ambient air quality and ensures that it is available to the public by means of alert thresholds, etc.;
- maintains ambient air quality where it is good and improves it in other cases.

The Framework Directive sets key pollution management parameters for the private sector. New standards will be adopted under the directive which will replace earlier directives concerning sulphur dioxide and particulates, lead and nitrogen oxide, described below. Over a period of ten to fifteen years, optimal ambient air quality limit values, margins of tolerance, assessment procedures and reporting requirements will be established for individual pollutants through a series of daughter directives. The first of these daughter directives (99/30/EC) concerning NO_2, SO_2 particulates and lead was adopted in 1999. The directive describes the numerical limits for the pollutants mentioned. It addresses both PM10 and PM2.5 but only establishes monitoring requirements and no limit values.

Further daughter directives have been released such as the Directive 2000/69/EC relating to limit values for benzene and carbon monoxide in ambient air, the Directive 2002/3/EC establishing long-term objectives for ozone in ambient air, to be achieved by 2010, and Directive 2004/107/EC comletes the list of pollutions initially described in the Framework Directive, with arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air.

Once limit values and alert thresholds have been determined, ambient air quality will have to be assessed. Action plans must be drawn up for zones which do not meet the limit values. Measures must integrate the protection of air, water and soil and be aimed at meeting deadlines. The public must be informed when alert thresholds are exceeded.

The directive's requirements presuppose adequate administrative systems, scientific know how and standards-based regimes for the management of ambient air quality. Often new procedures of consultation between authorities, alignment of monitoring and measuring methodologies, reporting and assessment are needed. Laboratories must be accredited in a manner consistent with European standards for quality assurance. Both laboratories and measuring sites must have organised systematic internal quality controls. Air quality improvement plans must be developed for areas of poor air quality with specific improvement deadlines. The plans may provide for measures to control or suspend activities such as motor vehicle traffic which contribute to the limit values being exceeded. Representatives from air

polluting industries as well as other interested parties should be consulted on implementation requirements, especially on the drawing up of the improvement plans so as to smooth the way to compliance with air quality standards.

New Air quality directive (2008/50/EC)

The new directive on air quality and cleaner air for Europe is one of the key measures outlined in the 2005 Thematic Strategy on air pollution.It establishes ambitious, cost-effective targets for improving human health and environmental quality up to 2020. It includes the following elements:

- The merging of most of existing legislation into a single directive (except for the Fourth Daughter Directive) with no change to existing air quality objectives as determined by the Framework Directive 96/62/EC, and 1–3 daughter Directives 1999/30/EC, 2000/69/EC, 2002/3/EC, and Decision on Exchange of Information 97/101/EC.).
- New air quality objectives for PM2.5 including the limit value and exposure related objectives – exposure concentration obligation and exposure reduction target.
- The possibility to discount natural sources of pollution when assessing compliance against limit values.
- The possibility for time extensions of three years (PM10) or up to five years (NO_2, benzene) for complying with limit values, based on conditions and the assessment by the European Commission.

The new directive gives Member States greater flexibility in meeting some of these standards in areas where they have difficulty complying. The deadlines for complying with the PM10 standards can be postponed for three years after the directive's entry into force (mid-2011) or by a maximum period of five years for nitrogen dioxide and benzene (2010–2015) provided that the relevant EU legislation such as industrial pollution prevention and control is fully implemented, and that all appropriate abatement measures are being taken.

Directive 2001/81/EC (National emission ceilings)

The aim of this directive is to limit emissions of acidifying and eutrophying pollutants and ozone precursors in order to improve the protection in the Community of the environment and human health against risks of adverse effects from acidification, soil eutrophication and ground-level ozone and to move towards the long-term objectives of not exceeding critical levels and loads and of effective protection of all people against recognised health risks from air pollution by establishing national emission ceilings, taking the years 2010 and 2020 as benchmarks, and by means of successive reviews.

Directive 2001/80/EC (Emissions from large combustion plants)

This directive applies to combustion plants, the rated thermal input of which is equal to or greater than 50 MW, irrespective of the type of fuel used (solid, liquid or gaseous). For these plants some rules for granting the permit or licence as well as emission limit values for dust, SO_2 and NO_x are set.

11.6 ENVIRONMENTAL NOISE

Directive 2002/49/EC (Assessment and management of environmental noise)

Directive 2002/49/EC is focussed on environmental noise to which humans are exposed. This includes noise in public parks and other quiet areas in agglomeration or build-up areas. Directive 2002/49/EC applies to areas near schools, hospitals and other noise-sensitive buildings and areas, too. Member States have to designate competent authorities to assess environmental noise and to approve noise maps and action plans for agglomerations, major roads, major rail-ways and airports, necessary. This directive also lays down common noise indicators and as-sessment methods. Moreover, Member States are obliged to make noise maps public to the citizens.

11.7 TRANS-SECTORAL REGULATIONS

Directive 2004/35/EC (Environmental Liability Directive)

This directive establishes a framework of environmental liability based on the “polluter-pays” principle in order to prevent and remedy environmental damage. If necessary operators need to undertake preventive measures in order to prevent any damage. If an environmental damage occurs, operators have to inform the authorities. They have to bear costs for preventive and remedial actions taken pursuant to this directive. Competent authorities are entitled to recover costs to overcome an environmental damage from any natural or legal person having caused this damage. Within five years for from the date on which those measures have been completed a cost recovery is possible. Member States must report to the Commission on the application of the Directive by 30th April 2013 at the latest.

11.8 THEMATIC STRATEGY ON THE SUSTAINABLE USE OF NATURAL RESOURCES

In December 2005 the Commission adopted COM (2005) 670 final – a communication regarding the development of a strategy on sustainable use of natural resources. The overarching environmental aim of a resources strategy is the reduction of negative impacts of resource use on the environment, i.e. on air, water, soil and living organisms. This strategy shall provide a knowledge base by identifying critical issues of resource-related impact (quantitative impact as well as impact on the quality of natural environment) and then assessing the options for improvement. Currently there are not any proposals for directives regarding sustainable use of natural resources.

Directive 2003/35/EC (Public participation regarding environmental measures)

This directive aims at improving public participation and information with regard to drawing up plans and programmes relating to the environment. It shall contribute to the implementation

of the obligations arising from the Århus Convention, which the EU signed in 2001. The Århus Convention which entered into force on 30th October 2001 has established a number of rights of the public (for citizens and associations as well) regarding the environment. This directive had to be implemented into national legislation of the Member States until 25th June 2005 at the latest.

Directive 2003/4/EC (Public access to environmental information)

Directive 2003/4/EC is focussed on securing rights of the citizens to have access to environmental information. It also obliges Member States to disseminate information about the environment regularly to achieve the widest possible availability. Directive 2003/4/EC is also a part of the implementation to fulfil the obligations arising from the Århus Convention.

Directive on access to justice in environmental matters (in law-making process at present)

Proposal COM (2003) 624 final of the Commission is focussed on access to justice in environmental matters. Like the two aforementioned directives this proposal was presented to fulfil the Århus Convention.

Directive for an Infrastructure for Spatial Information – INSPIRE (Directive 2007/2/EC)

This Directive lays down the rules for establishing, within the EU, an Infrastructure for Spatial Information (INSPIRE) whose purpose is to make it possible for interoperable spatial and environmental data and services related to these data to be exchanged, shared, accessed and used. INSPIRE aims to coordinate users and suppliers of information in such a way that information originating from different sectors will be combined and disseminated.

To make sure that this information is interoperable, the Commission must establish implementing rules no later than 15th May 2009 or 15th May 2012. Member States will make network services available to users so that they will be able to search for, view and download spatial information. These services will be accessible via an INSPIRE geo-portal managed by the Commission at Community level, and possibly via additional access points operated by the Member States. A fee may be charged for some services. Member States may limit public access to spatial information when such access could have an adverse effect.

Directive 1999/62/EC (Directive on road charging – amended by Directive 2006/38/EC)

Directive 1999/62/EC lays down certain rules defining the conditions under which user charges ("Eurovignette") and tolls may be applied to heavy good vehicles for the use of infrastructures, e.g. motorways. Though this directive is not implemented by local authorities it heavily affects them. As a result of charges on heavy good vehicles there is a tendency that especially lorries avoid using motorways because of those charges. Therefore roads beneath the motorway level are used more and more frequently. Traffic as well as air and noise pollution, even in the countryside, increases. The Directive is amended by Directive 2006/38 (17th May 2006). It aims to adapt a charging framework of road transport to cover both internal and external

costs, in order to comply with the principles of sustainability. The new directive also extends the possibilities for Member States to vary tolls according to a vehicle's emission category (Euro classification) and the level of damage it causes to roads, the place, the time and the amount of congestion. In addition it enables Member States to charge mark-ups on tolls on specific roads in mountainous regions, the revenue from these mark-ups being used for the funding of alternative infrastructure.

On 8th July 2008 the Commission published its Communication (COM(2008) 433 final) – „Greening Transport". The aim of this initiative is to move transport further towards sustainability. The package includes both: action to improve price signals to consumers and business so that they have incentives to change their behaviour and action to stimulate the market to offer alternatives so that when consumers and business choose to change their behaviour, they can do so easily. The package also includes an inventory of existing EU measures on greening transport and a communication on the additional greening transport initiatives that this Commission will take before the end of 2009.

Integrated Pollution Prevention Control Directive 2008/1/EC (Codified version)

The Integrated Pollution Prevention Control Directive (IPPC) applies both to new and existing facilities. To safeguard a high protection standard for the environment in general, the effects of facilities impacting the environment are to be comprehensively reviewed to prevent the shifting of emissions from one medium (air, water, soil) to another. The stipulations for granting licenses must be based on best available technology requirements. The immission-side approach of the IPPC Directive caused some discussion, as this would permit to emit regulation ordinaries more pollutants in less polluted areas than in areas with high levels of pollution. The requirements for the granting of permits for existing installations do not apply to about 20 combustion installations in Poland until 31st December 2010. This exception concerns the obligation to operate these installations in accordance with emission limit values, equivalent parameters or technical measures based on best available techniques according to relevant articles in this directive. There are exceptions for Slovenia and Slovakia regarding the same provisions of Directive. The requirements for several combustion installations located in Slovenia need to be fulfilled in either 2008 or 2010. Ten combustion installations situated in Slovakia have to attain the aforementioned provisions until 2009, 2010 or 2011. There are rather large exceptions for Romania and Bulgaria. In Rumania the requirements have to be met in 2008 (three installations), 2009 (15), 2010 (29), 2011 (26), 2012 (22), 2013 (12), 2014 (68) or 2015 (13). Bulgaria have to attain the aforementioned provisions until 2008 (five installations), 2009 (one) or 2011 (45). These exceptions are codified in the annexes to the Act of Accession 2003 regarding Poland, Slovenia and Slovakia and Act of Accession 2007 regarding Romania and Bulgaria.

Directive 85/337/EEC (Environmental Impact Assessment – EIA). Regional and local authorities have major competences in spatial development and land use planning. The EIA obliges them to assess the impact of infrastructure and other projects on the environment. The responsibility for the formal implementation of the directive therefore rests not only with the national governments but also with regional or local authorities. A report suggests that

every EIA requires a number of steps, so the minimum level of costs is likely to be in the range of 10.000 to 20.000 EUR. The main costs arise from the use of internal staff time, payments for expert advice and consultancy time and publicity and publications. Of these the staff and consultancy costs account for over 90 percent. Evidence suggests that introduction of strategic environmental assessments to regional and local land-use planning may increase the costs by five to ten percent.

Chapter 12 FURTHER EU-ACQUIS COMMUNAUTAIRE CONCERNING LOCAL AND REGIONAL LEVEL

FURTHER EU-ACQUIS COMMUNAUTAIRE CONCERNING LOCAL AND REGIONAL LEVEL[1] (SOCIAL POLICY, ANTI-DISCRIMINATION, AQUISITION OF LAND, FINANCES, LOCAL ELECTIONS AND CONSUMER PROTECTION)

Bernadette Malz, Philip Parzer – KDZ – Centre for Public Administration Research, Vienna

12.1 INTRODUCTION

The following chapter represents an update of specific parts of the chapter "Implementing the EU acquis at local and regional level – EU directives and regulations" of the LOGON Final Guide 2005, edited by Mr. Guido Dernbauer and Mr. Martin Loga. The subject areas anti-discrimination and free movement of people, acquisition of land by foreigners, social policy, local and regional finances, local elections as well as consumer protection have been updated to the current legal situation based on the new EU directives and regulations.

12.2 LEGISLATION AND FRAMEWORK CONDITIONS CONCERNING ANTI-DISCRIMINATION AND FREE MOVEMENT OF PEOPLE

In the case of the free movement of people, a distinction must be made between the free movement of workers (Article 39 Treaty establishing the European Community – EC-Treaty) and the freedom of establishment for independent natural or legal persons (Article 43 EC-Treaty). Sub-national authorities are confronted by these treaty provisions when they set rules or operate a policy in these areas. In addition, the free movement of workers is also important to them in their role as employers.

Within the scope of application of the EC Treaty, the general prohibition of discrimination under Article 12 EC-Treaty bans all forms of discrimination on grounds of nationality. This also comprises the so-called "hidden" discrimination which occurs if legal provisions are linked to conditions that can be regularly complied with only, or at least considerably more easily, by nationals.

The right of establishment refers to the pursuing of activities as self-employed persons and the management of undertakings. Under this right, the citizens of the Union are entitled to set up and manage an enterprise in any Member State; this also relates to the purchase of the required production and accommodation facilities. The right of residence linked to the right of establishment moreover extends to the family and dependants of the self-employed person. The mutual recognition of professional qualifications and diplomas is also closely linked to the right of establishment.

Under the right of free movement of workers across the Community, workers holding the nationality of a Member State and employed in the territory of another Member State enjoy

[1)] This article is based on the LOGON Final Guide 2005, chapter "Implementing the EU acquis at local and regional level – EU directives and regulations" edited by Guido Dernbauer and Martin Loga. This chapter has been reviewed and actualised by Bernadette Malz and Philip Parzer 2008.

the same rights and privileges as nationals of that Member State with respect to the accommodation required by them, including the acquisition of a dwelling.

The rights of migration, as outlined in Article 39 EC-Treaty, can be restricted on the grounds of public order, public security and public health. Finally, the Treaty contains an exception, with respect to positions in government, which applies to both the abrogation of discrimination and the rights of migration. For sub-national authorities in their role as employer, it is of primary importance that the exception for employment in government is interpreted by the Court in a narrow manner. The exception only covers positions in government with a direct or indirect involvement in exercising public authority and those functions in which one has the responsibility to protect the interest of the state or that of the other public bodies. It follows that the rules of free movement of workers will apply to many functions within sub-national authorities.

The abrogation of discrimination in Article 39(2) EC-Treaty, makes clear that the government as employer cannot in this case require that the teacher to be appointed has the nationality of the Member State concerned. Such forms of direct discrimination are banned and that is self-evident. But according to the jurisprudence of the ECJ, the abrogation of discrimination has wider repercussions. The abrogation also includes conditions which are not based on a distinction between nationalities but nevertheless put subjects of other Member States at a disadvantage. An example of this was a provision by the Italian legislature which, without any reference to nationality, determined that employment contracts for foreign language teachers could be for a fixed period while this did not apply to other employees. According to the Court, this constituted a prohibited indirect discrimination. It will be clear that such forms of indirect discrimination in particular, which are not immediately obvious, may pose problems for sub-national authorities.

Article 7 of Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community provides for equality of treatment in respect of any conditions of employment and work for migrant workers that are EU citizens, in particular as regards remuneration, dismissal and, should workers become unemployed, reinstatement or re-employment. Where labour law is concerned migrant workers are subject to the legislation of the country of employment. Council Directive 2000/43/EC of 29th June 2000 covers implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (“Race Directive”);

Council Directive 2000/78/EC of 27th November 2000 is about establishing a general framework for equal treatment in employment and occupation (“Equal Treatment Directive”). This directive put in place a general framework to ensure equal treatment of individuals in the European Union, regardless of their religion or belief, disability, age or sexual orientation, as regards access to employment or occupation.

12.3 ACQUISITION OF LAND BY FOREIGNERS

Although the legal provisions on property acquisition, sale and transfer do not constitute a separate matter under EC law, this legal issue is substantially affected by the fundamental freedoms of the EU and by the general prohibition of discrimination laid down in EC law (Article 12 and Article 13 EC-Treaty).

- To implement the right of establishment, Article 44(2) EC-Treaty stipulates that every citizen of an EU Member State may acquire and use land in the context of the exercise of his/her occupation. According to the jurisprudence of the European Court of Justice (ECJ), the right of foreigners, who are also EU nationals, to acquire land does not only extend to production facilities but also to the private residence of the self-employed person established in another Member State.
- The free movement of workers enables workers from other EU Member States to acquire land in a Member State for the purpose of living there.
- Moreover, the capital movement Directive (88/361/EC), adopted to implement the free movement of capital, enables private citizens of any EU Member State to invest in real property in any EU Member State to the same extent as nationals of that Member State.

The free movement of capital, however, can cause problems for the Member States if – e.g. due to dramatic price differences or specific characteristics of the landscape – second homes begin to proliferate while the access to the real property market is limited for local population groups with inferior purchasing power, e.g. as a result of a possible price increase. For this reason, Member States have instituted provisions to regulate the acquisition of land by citizens of the Union for the purpose of establishing second homes. But it is prohibited to prevent the acquisition of land by citizens of the Union for the purpose of capital investment.

Within the scope of application of the EC-Treaty, the general prohibition of discrimination under Article 136 EC-Treaty bans all forms of discrimination on grounds of nationality. This also comprises the so-called “hidden” discrimination which occurs if legal provisions are linked to conditions that can be regularly complied with only, or at least considerably more easily, by nationals. Therefore citizens of the Union legally entitled to stay in the territory of a Member State for a longer period of time (these are retired persons and financially independent persons including their families under the 1990 “residence directives”) can not be prevented from acquiring land in that Member State for their main place of residence. Restrictive provisions on land use – e.g. under regional planning concepts, building codes or land zoning and development plans – remain a national competence but must be applied equally to foreigners and nationals. This means that restrictions of second homes (must) apply both to citizens of the Union and nationals as stipulated by the prohibition of discrimination.

12.4 LEGISLATION AND FRAMEWORK CONDITIONS CONCERNING SOCIAL POLICY

Health and safety at work

Legislation in place mainly concerns local and regional authorities as employers (public administration, municipal utilities, and other services).

Relevant EU legislation in force:

- Council Directive 92/58/EEC of 24th June 1992 on the minimum requirements for the provision of safety and/or health signs at work.
- Protection against vinyl chloride monomers (DIR 78/610/EEC; OJ L 197 of 1978) – established atmospheric limit values, technical preventive measures and personal protection measures; this directive was partly changed by the Council Directive 92/58/EEC (as above) and the Council Directive 97/42/EC of 27th June 1997 amending for the first time Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work and the Council Directive 1999/38/EC of 29th April 1999 amending for the second time Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work and extending it to mutagens. Council Directive 1999/38/EEC was repealed by Directive 2004/37/EC of the European Parliament and of the Council of 29th April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work.
- First Framework Directive (DIR 80/1107/EEC; OJ L 327 of 1980) on protecting workers from all dangerous, physical, chemical and biological agents – consolidated in 1988 (DIR 88/642/EEC; OJ L 356 of 1988) – sets out limit values for exposure and requires employers to take preventive, protection and emergency measures, inform workers and monitor their health. This directive was changed by the Council Directive 88/642/EEC of 16th December 1988 amending Directive 80/1107/EEC on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work. Council Directive 80/1107/EEC was repealed by Council Directive 98/24/EC of 7th April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work.
- Exposure to metallic lead and its ionic compounds (DIR 82/605/EEC; OJ L 247 of 1982) – sets out exposure limit values and imposes regular monitoring and clinical assessments of the workers exposed. This directive was repealed by Council Directive 98/24/EC of 7th April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work.
- Exposure to asbestos (DIR 83/477/EEC; OJ L 263 of 1983) – sets limits on the concentration of asbestos dust in the workplace and measures on the best way to avoid it; revised in 1991 (DIR 91/382/EEC; OJ L206 of 1991), in 1998 (DIR 98/24/EC; OJ L131 of 1998) and 2003 (DIR 98/24/EC; OJ L131 of 1998).
- Exposure to noise (DIR 86/188/EEC; OJ L137 of 1986) – sets out the maximum admissible level of sound emissions and the average acoustic pressure. Directive 86/188/EEC was repealed by Directive 2003/10/EC of the European Parliament and of the Council of 6th February 2003 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise)

- Banning certain agents and work activities (DIR 88/364/EEC; OJ L 179 of 1988) – bans the production of four aromatic amines. Directive 88/364/EEC was repealed by Council Directive 98/24/EC of 7th April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work.
- Council Directive 89/391/EEC of 12th June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.
- Council Directive 89/656/EEC of 30th November 1989 on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace.
- Council Directive 89/655/EEC of 30th November 1989 concerning the minimum safety and health requirements for the use of work equipment by workers at work amended by Council Directive 95/63/EC of 5th December 1995 and Directive 2001/45/EC of the European Parliament and of the Council of 27th June 2001.
- The use of work equipment (DIR 89/391/EEC; OJ L 393 of 1989) – means that employers must take the necessary measures to ensure that the work equipment made available to workers may be used without impairment to their health and safety.
- The manual handling of heavy loads (DIR 90/269/EEC; OJ L156 of 1990) – lays down minimum health and safety requirements to reduce risks, especially of back injury, involved in the handling of heavy loads.
- Work with display screen equipment (DIR 90/270/EEC; OJ L156 of 1990) – sets out standards including requiring employers to test workers' eyesight and allowing workers' activity to be organised in such a way that the daily working time on a DSE includes regular breaks or changes in activity.
- Exposure to carcinogens (DIR 90/394/EEC; OJ L 196 of 1990) – sets out the obligation for the employer to use, whenever this is technically feasible, non-carcinogenic substitutes, imposes restrictions on access to places where carcinogenic agents are used, and describes measures for personal hygiene and protective equipment. This directive was changed by the Council Directive 97/42/EC of 27th June amending for the first time Directive 90/394/EC on the protection of workers from the risks related to exposure to carcinogens at work and the Council Directive 1999/38/EC of 29th April 1999 amending for the second time Directive 90/394/EEC. Directive 90/394/EEC was repealed by Directive 2004/37/EC of the European Parliament and of the Council of 29th April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work.
- Directive 2000/54/EC of the European Parliament and of the Council of 18th September 2000 on the protection of workers from risks related to exposure to biological agents at work.
- Health and safety of temporary workers (DIR 91/383/EEC; OJ L 206 of 1991);
- Medical treatment on vessels (DIR 92/29/EC; OJ L 113 of 1992) – aimed at securing a minimum standard of medical care for seafarers, by for example listing the medical stores to be carried on board;
- Protection of pregnant women at work and women who have recently given birth (DIR 92/85/EEC; OJ L 348 of 1992) – Council Directive 92/85/EEC of 19th October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.
- Organisation of working time (DIR 93/104/EC; OJ L 307 of 1993). Council Directive 93/104/EC of 23th November 1993 concerning certain aspects of the organization of

working time was repealed by Directive 2003/88/EC of the European Parliament and of the Council of 4th November 2003.
- Protection of young people at work (OJ L 216 of 1994, DIR 94/33/EC).
- Council Directive 89/654/EEC of 30th November concerning the minimum safety and health requirements for the workplace.
- Council Directive 98/24/EC of 7th April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work.
- Council Directive 1999/38/EC of 29th April 1999 amending for the second time Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work and extending it to mutagens.
- Directive 1999/92/EC of the European Parliament and of the Council of 16 December 1999 on minimum requirements for improving safety and health protection of workers potentially at risk from explosive atmospheres.
- Commission Directive 2000/39/EC of 8th June 2000 establishing first list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC on the protection of health and safety of workers from the risks related to chemical agents at work. Directive 2000/39/EC was amended by Commission Directive 2006/15/EC of 7th February 2006 establishing a second list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC.
- Directive 2002/44/EC of the European Parliament and of the Council of 25th June 2002 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration).
- Directive 92/57/EEC of 24th June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites ("Construction Sites Directive").
- Directive 95/63/EC of 5th December 1995, amending Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work ("Amendment to the Use of Work Equipment Directive").
- Directive 2001/45/EC of 27th June 2001 amending Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work ("Second Amendment to the Use of Work Equipment Directive");
- Directive 2003/10/EC of 6th February 2003 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise) ("Noise Directive");
- Directive 2004/40/EC of 30th April 2004 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) ("Electromagnetic Fields Directive – EMF Directive").
- Directive 2004/37/EC of 29th April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work ("Carcinogens Directive").

Equal opportunities

- The Directive on Equal Pay (DIR 75/117/EEC; OJ L45 of 1975) creates the obligation to apply the principle of equal pay for the same work at piece rates calculated on the basis of the same unit of measurement and equal pay for work at time rates for the same job. This Directive was repealed by Directive 2006/54/EC of the European Parliament and of the Council of 5th July 2006 on the implementation of the principle of equal

opportunities and equal treatment of men and women in matters of employment and occupation.

- The Directive on the principle of equal treatment for men and women as regards access to employment, vocational training and working conditions (DIR 76/207/EEC; OJ L39 of 1976) states that equal treatment means the absence of any discrimination on the grounds of a person's sex, including indirect discrimination based on marital or family status. This Directive was repealed by Directive 2006/54/EC of the European Parliament and of the Council of 5th July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.
- Directive 2002/73/EC of 23rd September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions ("Equal Treatment Amendment Directive").
- Directive 79/7/EEC of 19th December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security ("Equal Treatment Directive – Social Security");
- Directive 86/613/EEC of 11th December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood ("Equal Treatment Directive – Self-Employed Persons");
- Directive 86/378/EEC of 24th July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes ("Occupational Social Security Directive"). This directive was repealed by Directive 2006/54/EC of the European Parliament and of the Council of 5th July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.
- Directive 96/97/EC of 20th December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes ("Amendment Directive to Occupational Social Security Directive);
- Directive 97/80/EC of 15th December 1997 on the burden of proof in cases of discrimination based on sex ("Burden of Proof Directive"); scope extended by Council Directive 98/52/EC of 13th July 1998 ("Extension of Burden of Proof Directive") and repealed by Directive 2006/54/EC of the European Parliament and of the Council of 5th July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.
- Directive 96/34/EC of 3rd June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC ("Parental Leave Directive"); scope extended by Council Directive 97/75/EC of 15th December 1997 ("Extension of Parental Leave Directive");
- Directive 2004/113/EC of 13th December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

Social security, pension and retirement

Article 141 of the Treaty of Amsterdam, which established the principle of equal pay, covers not only wages and salaries, but also overtime, bonus payments, sick pay and benefits payable through occupational pensions. The EU has undertaken considerable work relating to equal opportunities in the area of pensions, social security and retirement. Relevant legislation includes the Directive on Equal Treatment in Statutory Social Security Schemes (DIR 79/7/EEC; OJ L6 of 1979) and the Regulation (EEC) No 1408/71 of the Council of 14th June 1971 of the application of social security schemes to employed persons and their families moving within the Community (a regulation is directly applicable to the member states).

This regulation is applicable to all acts of law concerning social security, payments for sickness and motherhood, payments for disability and for payments which aim to improve or support the ability to work. It is also applicable for payments for retired people, for survivor's pension, payments in the case of work accidents and work diseases, death grants and unemployment benefits. The regulation coordinates the different systems for social security in the member states to ensure that all employees and self employed persons have the same rights in different member states.

Whilst EU law permits Member States to operate differing ages of retirement for men and women, the European Court of Justice (ECJ) has established that all women employed in the public sector have the right to retire at the same age as the men with whom they work. Furthermore, the UK Government has proposed that the pension age should be equalised at 65 from the year 2010. In the Marshall Case, a woman had been head dietician with the Southampton and South West Hampshire Health Authority for over 13 years, when she was dismissed in 1980 at the age of 62. The ECJ ruled that the dismissal was made entirely on the grounds that she was beyond the normal retirement age for women (60) and amounted to sexual discrimination. Mrs Marshall was awarded compensation. This case confirmed that an employer contravenes the 'Equal Treatment' Directive when setting different retirement ages for male and female workers. Furthermore, state sector employees can rely upon this legislation to counteract such discrimination (Case 152/84 1986; OJ C79 of 1986).

Directive on the protection of pregnant women at work and women who have recently given birth (DIR 92/85/EEC; OJ L 348 of 1992). It established a minimum 14 week period of leave, the right to time off for ante-natal examinations and the prohibition of dismissal on the grounds of maternity. It therefore gives all British women the right to 14 weeks' leave regardless of their length of service, in addition to the longer period of absence (up to 29 weeks after the baby is born) for those who have two years' service. It also specifies that pregnant women should not be exposed to certain dangerous substances.

The Directive on parental leave (DIR 96/34/EC; OJ L 145 of 1996) was adopted by the Council of Ministers in 1996. Workers of both sexes are guaranteed a minimum of three months unpaid leave to care for young children up to the age of eight. Similarly, workers may take time off for 'urgent family reasons in cases of sickness or accident'.

12.5 FRAMEWORK CONDITIONS CONCERNING LOCAL AND REGIONAL FINANCES

With regard to this point it has to be noted that the public sector, which is the actual payer of the EU membership fee, gets back only a small part in terms of structural funds and other funding schemes. It is particularly the agricultural sector or subsidised industrial enterprises which benefit from the greater part of EU funds. In addition local and regional authorities have to muster considerable funds for modernising their infrastructure and administration in order to comply with EU law. Furthermore, it has to be mentioned that EU subsidies must be supplemented by national, regional and local funds (co-financing), which puts even more strain on public finance.

Effects related to local taxes

Basically, the 6th VAT Directive (91/680/EEC) and the consumer-tax system directive are of importance for local and regional authorities, depending on local and regional tax systems, since these instruments prohibit the levying of similar charges or give only a narrow leeway for such charges. It is of great importance, that those municipal charges, where the slightest doubt exists about their compliance with Community Law, must be carefully checked not only with the negotiation representatives of the European Commission but also be incorporated in the Accession Treaty.

European Monetary Union (EMU)

This part of the EU acquis communautaire is also binding for the countries accessing the EU. In general, the accession to the European Union does not mean necessarily the accession to EMU. After joining the EU they can at the earliest enter EMU after two years, this requires the fulfilment of the Maastricht Criteria.

These criteria ensure the stability of the Euro. That means that the applicant countries expected to fulfil these criteria within a couple of years after the accession to the Union to be able to join the Monetary Union as well.

The term “public deficit” comprises the budgets of central government as well as local and regional authorities and some other public institutions, such as social security funds. This means that if the public deficit is to be reduced, local budgets will be affected as well. So local and regional governments of those countries participating in the EMU will be directly affected by the public deficit criteria and the conditions of the stability pact concerning public debt as well as by the requirements for the introduction of the Euro.

12.6 LEGISLATION CONCERNING LOCAL ELECTIONS

Article 19 EC-Treaty (invented in Maastricht 1992 as Article 8b) establishes Union citizens’ right to vote and stand as a candidate in municipal elections. Substantively, Article 8b does not aim at harmonising the legal provisions of the individual Member States; it rather intends to eliminate existing legal obstacles and reservations on local or national level. On the basis

of the principle of equal treatment of all Union citizens, Article 19(1) EC-Treaty states that "every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State".

The provision of Article 19 EC-Treaty contains the two classic preconditions for the exercise of the active and passive right of vote: nationality and residence. The important new "European" element lies in the fact that the concept of nationality is indirectly separated from that of the national state and lifted to a Union level. Thus the actually determining element is no longer nationality of an individual Member State but rather citizenship of the Union. However, nationality of a Member State is still the prerequisite for holding Union citizenship.

The details for the implementation of the provisions contained in Article 19 EC-Treaty were laid down in 1994 in a separate directive outlining detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals (directive 94/80/EC of 19 December 1994 amended by directive 96/30/EC of 13th May 1996 and adapted by directive 2006/106/EC of 20th November 2006). This was to become national law in all Member States by January 1st, 1996 at the latest.

The directive contains the following principles:

- The provisions of the directive only refer to municipal, not to regional or national elections.
- The right to vote and stand as a candidate is voluntary, i.e. it depends on the Union citizen's own initiative whether he/she is entered into the respective voting list or not. For this purpose, the Member State of residence shall inform all persons entitled to vote and stand as candidates in due time and in a suitable manner about the conditions and details of exercising their right of vote in municipal elections.
- The conditions for exercising the right of vote should be the same for non-nationals as for nationals of the country in which the elections take place (principle of equal treatment of nationals and non-nationals). This refers in particular to a possibly prescribed minimum duration of residence in the municipality in which the elections take place.
- The national state's provisions concerning its own nationals are not affected, in particular if these reside outside the territory of their Member State of origin. This permits "parallel voting", i.e. citizens of the Union may participate in municipal elections in their Member State of origin despite being residents of another Member State, in which they likewise are entitled to vote and stand as candidates in municipal elections.
- Under the directive, the right of vote in municipal elections for citizens of the Union is to be implemented in the context of territorial authorities of the lowest level. In keeping with the national legal provisions, these territorial authorities of the lowest level must dispose of organs elected in general, direct elections and have competence for the independent administration of local affairs at the lowest level of political and administrative organisation.

Inter alia, this led to the municipal right of vote being also implemented at the district level, e.g. in the German "city-states" Hamburg and Berlin, as well as in Vienna, which is both

municipality and Land and where many municipal officials are at the same time officials of the Land Vienna.

In addition to the right to stand as a candidate in direct elections for the European Parliament, the right of citizens of the Union to participate in municipal elections is regarded as a clear and evident element of the development of the European Union towards a “political” Union and may certainly be viewed as an important step towards the “Europe of citizens”.

12.7 FRAMEWORK CONDITIONS CONCERNING CONSUMER PROTECTION

An area requiring particular consideration is public health which, following the Amsterdam Treaty, now acquires a new prominence in European affairs. Local authorities are typically enforcement bodies, monitoring compliance and taking enforcement action where appropriate. Local authority environmental health officers are usually responsible for enforcing food safety and hygiene legislation.

Several Member States have a strong tradition in public health analyses and actions, e.g. Scandinavia, whereas others have a poor understanding of these issues. Already within the EU Consumer, protection is still far from meeting the acquis communautaire.

With the enlargement of the EU, there needs to be a new emphasis on public health because there is a very large number of structural factors which have a major impact on consumer health and well-being, e.g. water, sanitation, housing, industry, transport, local planning and other environmental policies which have received too little attention in relation to health.

Local authorities are very important information providers: as the enforcement of food law is often entrusted to local authorities, local and regional authorities carry out inspection services and usually have the necessary powers to enforce regulation and to take appropriate measures in case of hazard to public health or non-conformity with legislation.

There remains, however, confusion about the exact scope and objectives of consumer policy. This, in part, explains difficulties in the effective enforcement of consumer laws. Other factors which need to be addressed include a lack of expert staff, organisational deficits, and a lack of sensitivity to consumer questions.

In the field of food safety, a regulation establishing the basis for a European Food Safety Authority (EFSA) was adopted by both, the Commission and the Council on 28th January 2002. EFSA’s remit covers food and feed safety, nutrition, animal health and welfare, plant protection and plant health. In all these fields, EFSA’s most critical commitment is to provide objective and independent science-based advice and clear communication grounded in the most up-to-date scientific information and knowledge.

Chapter 13 CONFERENCE "SOUTH-EAST EUROPE – MEETING THE CHALLENGES"

CONFERENCE "SOUTH-EAST EUROPE – MEETING THE CHALLENGES"

Kelmend Zajazi – Executive Director of the Network of Associations of Local Authorities in South-East Europe (NALAS), Skopje

The conference "South-East Europe – Meeting the challenges" was held on 6–7 November 2008 in the Cityhall of Vienna and was attended by over 100 representatives of local governments and associations from over 20 countries.

The conference was organised by the Council of European Municipalities and Regions (CEMR) with the support of the Austrian Association of Cities and Towns and NALAS (Network of Associations of Local Authorities of South-East Europe).

This article presents the main discussion points and the final declaration of the conference.

13.1 THE CONFERENCE: SUMMARY AND MAIN DISCUSSION POINTS

13.1.1 Opening of the Conference

- Even though the EU enlargement seems more distant for the countries of Western Balkans, the process of EU integration should be speeded up and it should be done thoroughly.
- We need to build Europe which starts from the ground, from the citizens and that is why local government has such an important role.
- LGAs should be more proactive in reacting to EU policies. However, they should be able to develop strong policy arguments which will make possible to influence decision making.
- The Charters and declarations of the Council of Europe are important tools to promote and monitor the implementation of principles of good governance.
- Environment and energy are increasingly more and more important issues which the local governments in SEE face.
- Cultural identity should be preserved through urban planning. There should be a balance between economic and social interests. Local government should set up some standards which the developers should follow.
- Local government should have a discretion to make their own choice on which model fits best for organizing the public services. The choices might include different forms of privatization, public private partnership, etc.

13.1.2 Plenary Session: The challenge of municipal Finances

- It is of utmost importance that the Local Government Associations in SEE position themselves for more effective negotiations with the national government on fiscal issues. The fiscal decentralization is much slower and inadequate comparing with the decentralization of competencies.
- The global financial crisis makes the process of decentralization and particularly the fiscal decentralization even more uncertain and complex process.

- There is a need to gather comparative data from different SEE and other EU countries on the share of public expenditures over the total expenditures as well as the hare of the local expenditures over the Gross Domestic Product.
- There is also a need to evaluate the fiscal reforms. How much has been done and is it going in the right direction. Timely adjustments of the course of fiscal reform need to be done.
- There is a need for capacity building support in the fields of property tax administration, developing the capacity of the Ministries of Finance in dealing with local government issues as well as in raising the awareness and tax-paying culture of citizens.
- There must be a minimum level of trust from the national government that the local government can do a good job in providing public services, in administering and using the funds. Without the mutual trust, it will be difficult to achieve proper fiscal decentralization.
- There are innovative ways to achieve fiscal decentralization should be in developing additional and diverse revenue streams such as fees for advertisements, touristic taxes, etc.
- The development of public private partnership is in line with the new public management paradigm, deregulation, etc.

13.1.3 Session A: The challenge of urban planning and development

- Any internal displacement of the population in the region ends up with migration from rural to urban areas.
- Land use is highly centralised in the region. This prevents local government from taking advantage on development opportunities.
- Decentralised Urban Planning process makes sense if there is truly citizen participation. It needs to be incorporated in the law, but the local government should undertake activities which go beyond the law.
- The process of urban integration of informal settlements is based on the Vienna Declaration and it is a precondition for EU accession. In that sense, future illegal construction should be stopped.
- There need to be a vertical coordination of the Urban Plans from National, general to local plans.
- The building permitting process needs to be simplified so that there are no unnecessary obstacles in utilisation of the potential for investments and development.
- The European Urban Charter II – Manifesto for a New Urbanity provides a vision.

13.1.4 Session B: The challenge of energy and the environment

- Environment and Energy projects require high scale funding/investments. Therefore the central government needs to support the local government in addressing the needs in these sectors.
- Environmental protection should be anchored with the constitution. This should be the bases for development of municipal action plans and the state should provide with necessary funding for the local government to implement those plans.
- The best strategy is to minimise energy consumption in order to protect environment.
- Local government have the need to develop the capacity of their staff to be able to handle energy efficiency projects.

- Relevant energy efficiency activities were mentioned such as: producing new sources of renewable energy, EE in schools, street lights.
- Solid Waste Landfills should tend to use by-products to produce energy. But for this a specific professional know-how is needed and there should be close cooperation with the national government and other actors.
- For these projects usually it is needed that the local community enters into Regional Cooperation. Cross border activities are possible.
- The New Protocol of Copenhagen should recognize the local governments' role.

Please find further information about the conference "South-east Europe – meeting the challenges" on the web site *www.logon.eu.*

13.2 DECLARATION OF THE CONFERENCE ON LOCAL GOVERNMENT IN SOUTH-EAST EUROPE "SOUTH-EAST-EUROPE – MEETING THE CHALLENGES"

We, elected representatives, mayors and political and executive leaders of local authorities and associations,

Assembled together in Vienna on 6th and 7th November 2008 on the occasion of the conference "South-east Europe – meeting the challenges", organised by the Council of European Municipalities and Regions (CEMR) and the Austrian Association of Cities and Towns, in close partnership with the Network of Associations of Local Authorities of South-East Europe (NALAS), to discuss the key challenges facing local and regional government in the south-east Europe region;

- Reaffirm the importance of good local governance as a key factor for peace, stability and development, and that strengthening local governance – in accordance with the recognised principles of local self-government – is at the heart of this process;
- Recall that to carry out their tasks in the best possible service of the citizens, local and regional authorities must have adequate resources, and in this context particularly underline the key importance of a good formal framework for consultation with the central levels of government;
- Point out that the challenges faced by the local and regional governments of south-east Europe are serious and wide-ranging, covering such issues as urban development and planning, waste disposal, environmental improvement, and sustainable energy;
- Welcome the clear demonstration on the occasion of this Vienna conference of the commitment of the representative associations of local government of south-east Europe to working together to tackle the key issues we face;
- Look forward to continuing to build stronger links with and between local and regional governments in the countries of south-east Europe, enabling the exchange of experience and good practice, and enhancing relations between the local governments and their citizens;
- Recognize that this indeed constitutes the necessary and vital path to overcoming past differences by building mutual understanding and dialogue;

- Underline that in this context, town twinning and transnational cooperation constitute particularly effective and unique means of bringing citizens together, promoting mutual awareness and dialogue, helping local authorities learn from each other's experiences, and strengthening feelings of a common European identity and sense of belonging, with full respect for the great diversity that this implies;
- Remain convinced that it is essential that the process of EU integration and reunification proceeds progressively with good standards being achieved by all local and regional governments as part of this integration;
- Call on the European Union and its institutions to pay more attention to the key role of local and regional authorities in this process of European integration and reunification, especially in the context of EU membership negotiations, and regret the current lack of due recognition in this context, particularly given the experience of recent EU enlargements in which the local and regional spheres played most fundamental roles;
- Call on the central governments of potential EU Candidate Countries to recognise the special requirements of local and regional governments and to include the latter in the European Integration processes as equal partners.
- Request the organisers of this conference to consider reinstating the LOGON working group on EU enlargement, in the framework of CEMR, for implementing the outcomes of this conference and for enhancing work on European integration;
- Recommend that the work of the NALAS Task Forces be complemented by the experiences from local government associations of EU Member Countries and by an enhanced co-operation with the Congress of the Council of Europe and its members;
- Welcome CEMR's commitment in the coming years to enhance its cooperation with its members and partners in south-east Europe, particularly in relation to preparing for closer EU integration, and by organising initiatives of interest, and working in cooperation with NALAS;
- Further welcome that CEMR and NALAS have taken concrete steps in laying the foundation for a future closer collaboration in the service of the representative associations and their members in this region – the local governments of south-east Europe;
- Thank the Austrian Association of Cities and Towns and the Austrian Development Agency for their particular support in making this occasion of exchange and debate possible.

AUTHORS

AUTHORS

Paulis Barons
Paulis Barons, born in 1938, studied Mechanics at the University of Latvia and Riga's Politechnical Institute. As an expert in the technical and legislative field of energy and environment he has worked as an advisor of the Latvian Associations of Local and Regional Governments since 1997.

Ines Breiner
Ines Breiner was born in 1971 in Vienna. After her studies of Law in Vienna she starts her work at the city of Vienna in 1995. Since 2005 she has acted as an Expert in the Municipal Department 27 – EU Strategy and Economic Development – unit: Services of General Interest.

Sandra Ceciarini
Sandra Ceciarini, born in Italy, studied Political Sciences in Paris. She has worked at the Council of European Municipalities and Regions (CEMR) since 1992. In CEMR she is responsible for actions concerning twinning and international cooperation and head of the unit Citizenship and International Cooperation.

Ilze Ciganska
Ilze Ciganska, born in 1980, studied Political Science at the University of Latvia and the Vidzeme University College. Since 2002 she has worked as coordinator of foreign affairs and project man-ager at the Latvian Association of Local and Regional Governments.

Bernadette Malz
Bernadette Malz, born 1983, studied Public Management at the Carinthia University of Applied Sciences and the Hogeschool Zeeland in the Netherlands. Since 2002 she has worked as Consultant at the KDZ – Centre for Public Administration Research specialised in international exchanges, organizational development and process analyses.

Karin Mathé

Karin Mathé was born in 1974 in Vienna. After her studies of Law in Vienna and Paris she starts her work at the city of Vienna in 2001. Since 2004 she has acted as an expert in the Municipal Department 27 – EU Strategy and Economic Development – unit: Services of General Interest.

Philip Parzer

Philip Parzer was born in Gmunden 1983 and studied Business Administration (majoring in Public Management, Finance and Motivation Theory) at the Vienna University of Economics and Business Administration. He is now consultant at the KDZ – Centre for Public Administration Research in the field of organizational development and business analysis/control.

Thomas Prorok

Thomas Prorok, born 1971 in Vienna, studied Political Sciences and European Law in Vienna. After his studies he worked in the Representation of the European Commission in Austria. Since 2000 he is project manager and trainer in the KDZ – Center for Public Administration Research. His key qualifications are capacity building for local governments and associations, consequences of EU membership for local authorities, quality management and organizational development.

Johannes Schmid

Johannes Schmid was born in 1970 and studied Law at the University of Vienna. Today he is working for the Association of Austrian Cities and Towns in Vienna with the responsibility for legal matters. Furthermore he is on the board of the Association for Executive Public Servants in Austria (FLGÖ).

Ginka Tchavdarova

Ginka Tchavdarova has studied Economic Cybernetics at the Kiev State University (Ukraine), Investment Efficiency and Economics and Mathematics. She is a research fellow-associate professor in Planning and senior research fellow in Territorial Systems Planning. Her key qualifications include local self-government, local finance, regional development, legislation reform in public administration, project management. Since its establishment in 1996 she was elected as the Executive Director of NAMRB. Furthermore Ginka Tchavdarova is also the Executive Director of Network of Associations of Local Authorities on South-East Europe (NALAS).

Boris Tonhauser

Born in Slovakia, Boris Tonhauser studied Natural Sciences, International Relations and European Law as well as Political Science. Mr. Tonhauser works at the Council of European Munici-palities and Regions (CEMR) and is responsible for cohesion, structural funds and information society. Before joining the CEMR he worked at the Association of Towns and Communities of Slovakia.

Oldřich Vlasák

Born in 1955 in the Czech Republic, Oldřich Vlasák studied at the Czech Technical University in Prague. In 1998 he was elected Mayor in Hradec Králové and in 2001 he became President of the Union of Towns and Municipalities of the Czech Republic. Since 2004 he is Member of the European Parliament and deputy coordinator of the EPP-ED, in the Committee for Regional Development.

Thomas Weninger

Born in Vienna in 1963 Thomas Weninger studied Political Science at the University of Vienna. In 1994 after working as scientist he joined the City of Vienna as Magistrate and from 2004–2006 he was head of the Department for EU-Strategy and Economic Development. Since 2006 Mr. Weninger has been Secretary General of the Austrian Association of Cities and Towns.

Simona Wolesa

Born in Styria, Ms. Simona Wolesa studied Law and Art History at the University of Graz. In 1989 after an internship at the European Commission Ms. Wolesa became assistant of the European Parliament. Since 1994 she is head of the Brussels Office of the Austrian Association of Cities and Towns.

Kelmend Zajazi

Kelmend Zajazi heads the NALAS Secretariat as of March 2007. In the past 10 years, Mr. Zajazi worked with the USAID programs on Local Government Reforms and Democracy Network Program in the former Yugoslav Republic of Macedonia. Mr Zajazi has received his M.A. in Public Policy and Management at the University of Pittsburgh in 2005 and holds a medical degree.