The impact of EU accession on local authorities in Serbia

Standing Conference of Towns and Municipalities

SKG

National Association of Local Authorities in Serbia

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This report is produced with support from Sweden within the Program Support to Local Governments in Serbia in the EU Integration process. The contents are the sole responsibility of SKL International and SCTM and can under no circumstance be regarded as reflecting the position of Sida (the Swedish International Development Agency).

The impact of EU accession on local authorities in Serbia

Report for the Standing Conference of Towns and Municipalities
Support to Local Governments in Serbia in the EU Accession Process

December 2013

FOREWORD

THE ACCESSION PROCESS OF THE REPUBLIC OF SERBIA to the European Union (EU) is at a crossroads. Serbia is expecting a date for the start of accession negotiations, a key step and turning point which will decisively intensify the accession process of Serbia to the EU. Based on the experiences of EU member states that previously went through the accession process to the EU, it is of much importance for local self-governments to be involved in the pre-accession negotiations. The reason for this is a well-known statistic that around two thirds of all mandatory legislation that arises from the Community *acquis* is implemented by local authorities within EU. Increased transparency and tighter internal control procedures as a result of accession may bring changes to the entire culture of local self-government, even in seemingly unrelated areas. Also, another lesson learnt from the experience of other countries is that it is never too early to start preparing. The effects of accession could be felt long before the Treaty of Accession is signed.

Because of all of this the Standing Conference of Towns and Municipalities (SCTM), with support from the partner organization the Swedish Association of Local Authorities and Regions (SALAR) decided to prepare this document *The impact of EU accession on local authorities in Serbia*. The document developed through the joint programme »Support to local self-governments in Serbia in the EU integration process« represents a timely assessment of the impact of EU *acquis* relevant for LSG in Serbia on competences, resources and capacities of LSG units. This report explores the influence of the EU *acquis* which has been transposed into national legislation and which will become part of the national legislation within EU accession process in areas of particular interest for local government in Serbia. The Impact analysis is based on several documents prepared as part of the program. First document is *Assessment of compliance regulations and responsibilities envisaged in the National Plan for Integration (NPI) in the period 2008–2012 and report on compliance with the NPI*. Based on this document SALAR experts prepared an essential contribution by providing us with the qualitative analysis of key EU legislation in several selected areas of local government. Finally, local experts used this analysis to made comparison with the Serbian legislation and practice, and implemented field research to assess the current capacities on the local level in Serbia for implementation of EU legislation during the accession in particular areas.

For us in the SCTM, support from SALAR in development of this document was most valuable since the Swedish partner has already gone through a process of accession to the EU and adaptation of Local Government sector to the conditions of membership in the EU. SALAR proved itself to be highly relevant as a cooperation partner that can substantially assist the SCTM and Serbian municipalities on the track to the EU having in mind its extensive knowledge and experience dating back to its own preparations for Sweden's EU accession in 1995. SALAR's role in representing the

interests of its members during this process was used to demonstrate how, with proper research and preparation, SCTM can play a vital and effective role, not only in safeguarding the interests of its members, but also in supporting Serbia's EU accession preparations as a whole including, for example, dialogue with central Government on the requirements of the *Acquis* Communautaire and impact on LSGs in Serbia.

Finally, *The impact of EU accession on local authorities in Serbia* is a great example of the fruitful cooperation between the two sister organizations. Both organizations are very proud of the text since it represents a pioneer effort in Serbia, but also in region, in preparation of local self-governments for the accession negotiations.

Table of contents

Executive summary

THIS REPORT REPRESENTS the contribution of local and international experts to an assessment of the impact of EU accession on local authorities in Serbia. It covers seven policy areas: public procurement, state aids, communal services, rural development, employment and social policy, energy efficiency and environment. While further effects at the local level may be anticipated in other areas too, these are the ones that are known to be of particular concern to municipalities in other member states and/or of special interest to SCTM.

The impact of accession here is taken to mean how joining the EU will affect local authorities' capacity to meet the needs of their citizens (which is not quite the same as how accession will affect citizens or local officials). For each of the policy areas covered, the report gives a broad overview of EU legislation and policy and how this has affected local government in existing member states. It then compares the present situation in Serbia and assesses what local authorities and SCTM could do to improve the outcome – including by means of influence at the EU level, influence vis-à-vis the national authorities and capacity-building at local level.

The following table summarises key aspects of the potential impact in each of the main policy areas covered.

Key aspects of the potential impact of EU accession on local authorities

Policy area	Potential impact	Action/preparation
Public procurement	– Better use of local resources through increased transparency and competition (including from bidders in Serbia) – Substantial administrative burden in managing tenders above the relevant thresholds – Increase in the number of appeals going to court (meaning uncertainty as well as extra work)	– Training and exchange of best practice to promote efficient procedures and minimise the risk of legal challenges – SCTM could provide expert advice (perhaps in conjunction with national authorities) – Attempt to persuade the government not to make thresholds or procedures stricter than the EU requires
State aids	– Greater competition and transparency – Less discretion in the use of local revenues – Risk of severe complications in the event of illegal state aid (which may include tax breaks, property transactions, direct award of contracts, etc.)	– Basic awareness-raising among all decision-makers and a review of current aid schemes – SCTM (perhaps in cooperation with the national state aids authority) could provide expert advice – Consider whether any existing aid schemes should be notified to the EU before accession

Communal services	– Greater competition and transparency, but upheaval for some public utility companies (PUCs) and restriction of local policy options – Services provided by some PUCs may have to be opened up to competition, or public funding and/or the structure of PUCs may need adjustment to avoid state aid concerns – Licensing and regulation of services covered by the Services Directive must be non-discriminatory, necessary and proportionate	– Seek clarification from the national authorities on how PUCs are affected. For example, amendment of ownership or contractual relations, or inclusion on Serbia's list of 'services of general economic interest' – In-depth review of communal services to determine appropriate options on a case-by-case basis (e.g. competitive tendering, notification as state aid, reintegration into the municipal administration, reform of licensing and regulatory framework)
Rural development	– Substantial amounts of available funding with an explicitly local dimension – But substantial administrative capacity and co-financing required to participate fully	– Influence at national level so that local government's priorities are taken into account in programming and SCTM is fully recognised in the 'partnership' for managing EU funds (including pre-accession funding) – Build capacity at local level for administration of EU-funded projects – Lobby for greater strategic focus on the needs of rural communities prior to accession
Employment and social policy	– Gender equality and anti-discrimination beneficial for local administration and capacity-buwilding – Direct costs of improved working conditions, e.g. for part-t – Opportunity to play a greater role in national labour market policy, e.g. through local youth employment initiatives ime and fixed-term employees – Possible opportunities to influence EU–Serbian affairs more generally as a partner in the social dialogue	– Seek recognition as a representative of public sector employers (at both national and EU level) with a view to participating in the social dialogue – Monitor transposition of labour law directives with implications for salary costs and/or working time – Seek a formal role for local government in contributing to Serbia's national reform programme, and review local recruitment policies in view of EU and national goals – Seek networking and funding opportunities with other local authority associations
Energy efficiency	– Opportunity to increase energy efficiency and use of renewables in line with EU and national targets, with potential financial as well as environmental benefits – Risk that a shortage of resources will leave local governments unable to meet commitments or finance up-front investments	– Monitor transposition of EU legislation to ensure sufficient local flexibility – Seek financial and technical support where local authorities are responsible for implementation, e.g. of energy efficiency standards – Consider commissioning a study of a typical municipality, including energy usage, the cost of meeting EU obligations, financial and environmental benefits of investments in buildings, energy infrastructure, etc.
Environment	– Chance to highlight the key role of local authorities in promoting sustainable development – as planners, enforcers of standards, service providers – Major challenge in terms of administrative capacity and financial resources required to implement EU standards	– Provide input to the accession negotiations to ensure a realistic transition periods for upgrades to infrastructure (e.g. waste, water) and standards (e.g. water, air quality) – Seek resources to expand coverage of SCTM's assistance plan in this field to all local authorities

It is clear from the table that the impact will in any event be substantial. Whether it is positive or negative will depend greatly on how EU rules and policies are implemented at national and local level, and on how well prepared Serbia's towns and municipalities are. Many of the effects outlined above are by nature difficult to quantify. But the available quantitative indicators suggest enormous variation in performance, both between member states and between local authorities in the same member state.

For example, in public procurement, the number of person-days per procedure varies by a factor of as much as seven to one between the least and the most efficient administrations. In the field of energy efficiency, one member state set a target of a 33 per cent energy saving by 2020 for all public bodies, including local authorities, even though the EU-wide target was only 9 per cent; in Sweden, the national measures transposing the same EU rules did not require municipalities to make savings, but granted them financial support of around €35,000 each to implement an energy efficiency strategy. As regards EU funds, the percentage of 2007–2013 structural and cohesion fund allocations paid out by November 2012 ranged from just over 20 per cent in the worst-performing member state to just over 60 per cent in the best.

While some of this variation in performance is due to national as well as local policy and practices, it may nonetheless be large enough to determine whether accession is perceived as a success or failure at the local level, at least in the early years. The report argues that impact should be judged not by the balance of additional opportunities and responsibilities that accession will entail, but by whether local authorities have the capacity and resources to make the most of opportunities and fulfil responsibilities. To ensure that they do, it is vital that the government takes account of local implementation of EU legislation when preparing Serbia's negotiating position. It is also essential that local authorities themselves, with the support of SCTM, prepare thoroughly and in good time.

The temptation to delay preparations until the path to accession is clearer is understandable, but the experience of other countries suggests that the danger is rather that local authorities will wake up too late. It is thus highly positive that SCTM is beginning to address these issues at a relatively early stage. Local experts' assessments of the present state of affairs in Serbia point to a number of areas where action is needed sooner rather than later.

For example:

- Local leaders should be aware that some EU rules (e.g. on state aids) already apply, and that the implementation gap in others (e.g. public procurement) will begin to close long before accession actually occurs.
- Uncertainty over the application of EU rules in some areas may already be having an impact, for example on investment prospects in communal services. The need to clarify whether and to what extent public utility companies will need to be opened up to competition and/or restructured is thus pressing.
- In policy areas such as rural development, greater involvement of local administrations in defining the priorities of local communities is needed today in the context of pre-accession funding, and will pay dividends when it comes to establishing a strong 'partnership' for the management of the full range of EU funds.
- Local capacity-building in particularly challenging areas such as environmental legislation and public procurement has begun, but resources are insufficient to cover all municipalities.

For understandable reasons, EU relations tend to be regarded mainly as a matter for foreign policy until a country actually joins the Union. Local authorities may be consulted as stakeholders, but their role has been somewhat neglected, or at least recognised only belatedly, in recent accessions. What the present report makes clear is that local authorities are much more than just stakeholders. They have a vital part to play in implementing EU legislation and policy and thus in ensuring a positive outcome of accession for the country as a whole.

Introduction

THIS REPORT REPRESENTS the contribution of both international experts (in particular from the Swedish Association of Local and Regional Authorities, SALAR) and local experts in Serbia to an assessment of the impact of EU accession on Serbian local authorities. The assessment is being conducted by the Serbian Standing Conference of Towns and Municipalities (SCTM) as part of the »Support to Local Governments in Serbia in the EU Accession Process« project financed by the Swedish International Development Cooperation Agency (SIDA).

It was decided at an early stage in the project that SCTM's assessment should focus on a limited number of key policy areas where a significant impact is expected, partly in view of the experience of other countries. Accordingly, this contribution is structured around seven core chapters on the following agreed areas:

- public procurement
- state aids
- communal services
- rural development
- employment and social policy
- energy efficiency
- environment.

At SCTM's request, EU structural and cohesion funds were omitted from the analysis at this stage on the grounds that access to the full range of funding comes only with accession itself. Common and general provisions are noted in the chapter on rural development, however, and it should be underlined that an early understanding of how the funds are administered may help local authorities to make the most of pre-accession funding and secure their rightful place in the 'partnership' of sub-national and other public authorities, civil society groups, social partners, etc.

It must be stressed that the above areas are not the only ones of relevance. Further issues for local authorities should be anticipated under many other chapters of the *acquis*. As a tool for advocacy, however, the impact assessment is likely to be more effective by focusing on known areas of concern rather than attempting to survey all areas where local authorities might be affected, even marginally. It should also be stressed that this report provides only an overview of the most important aspects of the EU *acquis*[1] in each area, in the opinion of the experts consulted; it does not (and could not in the space available) provide an exhaustive account.

The key contribution requested from international experts was a qualitative analysis of aspects of the EU *acquis* in the agreed areas, taking account of the experience and recommendations of local authorities in other countries, notably Sweden[2]. The existing degree of approximation with the *acquis* in Serbia, including implementation at the local level, is covered in the contributions from local experts in the third section of each chapter[3]. The local experts' contributions here are intended to summarise longer reports (in Serbian) based on field visits to selected municipalities and aiming to assess for each policy area whether:

- existing local authority competencies in Serbia are sufficient to implement the *acquis*
- a strategic framework at central, regional and local level for the introduction of new standards required by the *acquis* is in place
- there is sufficient institutional, administrative and financial capacity (in public utility companies as well as institutions at the local level) to implement the *acquis*.

The report focuses predominantly on the practical consequences of EU accession for local authorities and on what they can do to maximise the potential benefits and minimise costs. Accordingly, it dispenses with a conceptual framework and proceeds directly to the concrete policy areas outlined above, with the following broad structure:

1. Brief overview of the impact of accession at local level, drawing on the experience of other member states

2. Overview of the EU *acquis* and identification of key aspects with implications for local authorities

3. Comparison with Serbian legislation and practice (contributions from local experts)

4. Assessment of the capacity of local authorities and SCTM to affect the outcome (e.g. through negotiations at EU level, influence over national implementing legislation or timely preparation)

5. Indicators of potential outcome. Impact is assessed mainly in qualitative terms. Quantitative indicators are given where available, but it should be clear that impact in the sense intended here is not a simple cost-benefit calculation. The impact of accession on local authorities is clearly not synonymous with the impact on citizens at the local level, who will be affected in many ways that do not necessarily involve local government (e.g. increased trade with other EU states). Nor does it mean the impact on local officials, whose lives may be made harder (or easier) in ways that are not necessarily to the detriment (or benefit) of local citizens. Rather, impact is taken here to mean the impact on local authorities' ability to maximise their citizens' welfare. EU accession is certain to entail additional responsibilities and opportunities for local authorities, but this in itself is not necessarily a bad or a good thing. The key question in many cases will be whether they have the necessary capacities and resources to fulfil opportunities and make the most of opportunities.

1
The accumulated body of EU law and obligations, including treaties, legislation, resolutions and declarations, international agreements and the judgments of the Court of Justice.
2
Sweden is of special relevance in part because of the pioneering impact assessment produced by the local authority associations in the run-up to Sweden's EU accession in 1995, and also in view of SCTM's study visit to Stockholm in September 2011. This included presentations on the above policy areas (among others) by experts from SALAR, many of whom have provided further insights on the challenges for Serbian local authorities as part of the present contribution.
3
Experts from Serbia and Croatia contributed the entire draft for chapter 7 on environment..

The report has been compiled by David Young on behalf of SKL International with contributions from the following experts:

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Any opinions provided are those of the authors and do not necessarily reflect those of SALAR, SCTM or SIDA.

1. Public procurement

1.1. Overview of the impact of accession on local authorities

EU rules on public procurement have a profound influence on local authorities' roles as purchasers of goods, services and property and contractors of public works. Moreover, in previous enlargements, the impact at the local level has often been underestimated.

The rules require local authorities to follow specific procedures aimed at guaranteeing competition, fairness (equal treatment and non-discrimination) and transparency. The procedures are in many cases more stringent, or at least different, from former national rules, and implementing them correctly requires additional human resources and expertise. Uncertainty often remains, both over the applicable rules and because it is easy to make mistakes, which may give unsuccessful bidders grounds to appeal. Appeals can lead to delays and, ultimately, the annulment of contract awards and/or damages.

Implementing these rules is also expected to generate benefits, in particular better use of local resources through the cost savings and/or quality improvements that result from increased competition and transparency. Moreover, the benefits for local citizens may well be greater than they seem to local officials, who bear much of the administrative burden and may also tend to overestimate the gains from using public contracts in a discriminatory manner to develop local businesses, boost employment, and so forth.

Although the rules on public procurement are challenging to implement at the local level, there is no real alternative. The best local authorities can do is to prepare, while seeking to ensure that the national authorities do not further complicate matters (as has happened in some other countries). The impact of accession in these areas will depend critically on widespread awareness of the rules and capacity to implement the relevant procedures efficiently.

1.2. Key aspects of the EU *acquis* and related issues for local government

The broad principles of the EU public procurement rules stem from the Treaties and case law of the European Court of Justice. Although these apply even outside the scope of secondary legislation, the key acts of relevance to local authorities' procurement are:

Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts

Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

There is also a directive on procurement in defence and security (2009/81/EC), though this is not generally relevant for local authorities.

In addition, there are two directives (both most recently amended by the so-called Remedies Directive, 2007/66/EC) that set out remedies in the event of infringements of the above acts:

Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts

Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

There is also a Regulation establishing a classification system for supplies, works and services, which contracting authorities must use:

Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV).

The public procurement legislation is currently in the process of being revised, with Commission proposals at the end of 2011 for directives to replace 2004/17/EC and 2004/18/EC as well as a proposal for a new directive on concessions (e.g. where a contractor is granted the right to collect tolls as compensation for constructing a bridge)[4]. These proposals have been debated in Council, with agreement on the general approach, and consolidated proposals now await a first reading in plenary session in Parliament[5]. Since the revisions will bring significant changes to the framework, it will be as well for local authorities in Serbia to focus their preparations on the revised framework (and corresponding amendments to the national Law on Public Procurement).

The essential principle is that contracting authorities (including local authorities and their associations) must put contracts valued above certain thresholds out to tender throughout the EU, and may not exclude bidders from other EU countries or include criteria designed to favour bidders from their own municipality or region. The thresholds are € 5,000,000 for public works (e.g. construction of infrastructure), € 200,000 (in the case of sub-national authorities) for general service and supply contracts and € 400,000 for utilities.

As regards services, there is currently a distinction between priority or 'Part A' services and non-priority or 'Part B' services with a limited cross-border dimension. The latter are exempt from the requirement to carry out competitive tenders (though other parts of the rules, for example on basic transparency and non-discrimination, still apply). This category includes several items of particular interest to local authorities, including social services, health and education. However, the distinction is likely to be removed in the revised framework, meaning that some of these services may have to be put out to tender. On the other hand, the threshold for social services and certain other services (including several of relevance to local authorities) will be raised (to € 750,000 according to the latest draft).

While the basic principles of EU public procurement are straightforward, there are a number of exemptions and different procedures that may or must be followed, which makes the application of the rules a complex field. Legal advice is often essential, especially since account must be taken of both EU and national case law. The many pitfalls include (to give just a few examples) failure to advertise contracts correctly, direct award of additional works or services without competition, and vague or potentially discriminatory terms in tender specifications. Infringements may result in suspended procedures, overturned or amended decisions, the imposition of fines on contracting authorities and the award of damages to those harmed.

Among the concrete issues regularly faced by local procurement officers[6]:

- Dealing with challenges (whether formal or informal) from unsuccessful or excluded bidders. This may be time-consuming even if contracts are not overturned, and the mere possibility of legal challenges may encourage a risk-averse approach.
- Problems in contracting out certain municipal activities because of the need to follow procurement procedures (which do not apply if activities are carried out directly by municipal staff).
- Legal uncertainty over whether competitive tenders are required when sharing, trading or pooling services with other local authorities or other public bodies (there have been many problems, for example, in the area of waste

4 Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on procurement by entities operating in the water, energy, transport and postal services sectors, COM(2011) 895 final, 2011/0439 (COD), Brussels, 20.12.2011.
Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on public procurement, COM(2011) 896 final, 2011/0438 (COD), Brussels, 20.12.2011.
Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the award of concession contracts, COM(2011) 897 final, 2011/0437 (COD), Brussels, 20.12.2011.

5 Council of the European Union, Proposal for a directive of the European Parliament and of the Council on public procurement – Presidency compromise text, 16725/12 MAP 70 MI 772 CODEC 2794, 27 November 2012.

6 See, for instance, Local Government Association (2010b), Lundstöm (2011), Statskontoret (2005), European Commission (2012).

management, a 'Part A' service where intermunicipal cooperation is common).

The new proposals contain elements of simplification designed partly to make life easier for subnational authorities. There is the option to publish a prior information notice that would serve as notification of upcoming tenders throughout the year, instead of individual contract notices for each tender. However, few if any Swedish municipalities are expected to make use of this, since it would entail reduced publicity, whereas municipalities generally wish to attract more, not fewer, bidders.

In its opinion on the Commission proposals, the Committee of the Regions was critical of the many and 'extraordinarily detailed' new provisions, and feared that some of the intended simplifications did not go far enough to have the desired effect[7]. The revised text goes some way towards addressing these concerns, but there are outstanding issues. For example, there are new provisions restricting the modification of contracts during their term, which local experts fear will reduce flexibility and/or increase the administrative burden.

The proposed directive on concessions also brings new provisions to a hitherto lightly regulated area. The existing framework includes rules on concessions for public works (e.g. toll roads or bridges), but these have been of little concern to local authorities since they are rarely responsible for the kinds of infrastructure projects that lend themselves to concession contracts. However, the new proposal also encompasses service concessions, which may be of relevance to local authorities in areas such as chimney-sweeping or debt recovery.

As long as concession agreements are reached through competitive and non-discriminatory tendering procedures, there should in principle be no problem. The same applies to public-private partnerships more generally[8]. But local procurement experts will need to check whether existing procedures for granting concessions need to be reviewed, particularly once the new directive is agreed.

1.3. Comparison with Serbian legislation and practice

The key act of relevance for public procurement in the Republic of Serbia and to local authorities' procurement is the Law on Public Procurement (Official Gazette of the Republic of Serbia no. 124/12). This Law came into force on January 6 2013, replacing the previous Law on public procurement (Official Gazette of the Republic of Serbia no. 116/08). The adoption of the new Law represents significant harmonisation of the Serbian legal framework with the *acquis*.

This statement is certainly supported by reports of the European Commission, the European Parliament and the Council. The principles of competition, transparency and equality of bidders, which are key principles of the EU directives, are defined by the Law on Public Procurement as key principles and are further developed in the various provisions of the Act. The new law has added further types of procurement procedure, so that the available options are now completely in line with the EU directives. The law specifically defines public procurement in the water, energy, transport and postal services as well as procurement in defence and security, in accordance with EU directives. Article 56 of the Law determines the establishment of the common procurement vocabulary in accordance with the relevant vocabulary in the European Union.

Furthermore, it is important to underline that at the national level there has been significant strengthening of the competence and organisational capacity of the Public Procurement Agency and the Republic Commission for the Protection of Rights in Public Procurement, which is also observed in EU reports.

7 OPINION of the Committee of the Regions, PUBLIC PROCUREMENT PACKAGE, CdR 99/2012, Brussels 10.10.2012.

8 See also the following communication, which provides an interpretation of the rules in the case of public-private partnerships: Commission interpretative communication on the application of Community law on Public Procurement and Concessions to institutionalised PPP (IPPP), 2008/C 91/02, Official Journal C 91 of 12.4.2008.

After the receipt of a complaint submitted by a bidder local authorities are now entitled only to accept the complaint; if they wish to reject it they must forward it automatically to the Commission (previously they could reject a complaint, so that the bidder had to file an additional complaint with the Commission). However, this Law has just started to be applied from April 1 2013, and it remains to be seen whether the newly strengthened Commission will be more efficient than before. If so, bidders would surely have more faith in the process of remedies, which would probably result in more challenges from unsuccessful bidders for local authorities.

The Law on Public Procurement applies for all public procurements of an estimated value of more than 400,000 RSD (c. € 3,500). Although procurements with an estimated value of less than 3,000,000 RSD (c. € 26,000) are considered as procurements of small value, for which some of the rules are less strict, the thresholds are clearly stricter than the EU rules require (the key EU threshold being € 200,000 for general service and supply contracts in the case of sub-national authorities). Thus almost all public procurement must be carried out according to the same complex procedures, which can be quite challenging for small local governments that do not have many procurement experts.

The EU Commission's 2012 progress report on Serbia suggests that progress is 'moderately advanced'. In the report there is no mention of major non-compliance with regulations, but on the other hand it is stated that Serbia needs to keep up with the steady efforts to implement its legislative framework for public procurement, and in particular to avoid irregularities in the use of the negotiated procedure. Almost identical findings were presented in the Communication from the Commission to the European Parliament and of the Council concerning the Enlargement Strategy and Main Challenges in 2012–2013. It should be noted that the above-mentioned documents were published in October 2012 and did not take into account the new Law on Public Procurement, which entered into force on 6 January 2013. In the light of these new circumstances, the recent joint report from the EU Commission and the High Representative for Foreign Affairs and Security Policy notes that:

A significant and positive development was the adoption of the new Law on Public Procurement at the end of 2012. This law further aligns Serbian legislation with the *acquis* and generally improves the efficiency of public procurement procedures, for example by centralising public procurement. It strengthens the institutions in charge of the enforcement and monitoring of the public procurement rules. New rules for the prevention of corruption and conflict of interest were introduced. Overall, this law should result in more transparent and efficient procurement procedures, and increased competition [9].

However it should be noted that the European Commission had certain objections to the Law on Public Procurement adopted towards the end of 2012, in particular regarding the issue of the privileged status of domestic suppliers and the wider exemptions as compared to the exemptions provided for in EU directives. The Commission remarked that many purchasers will not be aware of their legal obligations, which stem directly from the Stabilisation and Accession Agreement, to treat bidders from all EU member states equally. This can be corrected by amending the Law or through training of either bidders or purchasers. In terms of exemptions, the European Commission objections were primarily related to the procurement of goods by the Directorate for Commodity Reserves and to certain procurements by the National Bank of Serbia; the exemption of these institutions from the Law on Public Procurement is not in accordance with the European Union directives. This can also be corrected by amending the Law.

The National Programme for the Adoption of the *Acquis* (2013–2016) published by the Serbian European Integration Office in February 2013 points out that the new Law on Public Procurement represents further harmonisation with EU regulations regarding public procurement, notably as regards the introduction of framework agreements, dynamic purchasing systems, the common procurement vocabulary (CPV), the introduction of competitive dialogue, and harmonisation of procurement procedures of entities operating in the water, energy, transport and postal services.

9 JOINT REPORT TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Serbia's progress in achieving the necessary degree of compliance with the membership criteria and notably the key priority of taking steps towards a visible and sustainable improvement of relations with Kosovo, JOIN(2013) 7 final, Brussels, 22.4.2013.

This document also establishes priorities for further legislative alignment during 2013, and lists by-laws that are expected to be adopted within the prescribed period along with the institutions responsible for adopting them. Further steps are planned for the period 2014–2016, primarily related to the harmonisation of national legislation on public procurement with the revised EU directives, adoption of which is expected in 2013.

1.4. Capacity to affect the outcome

1.4.1. Influence at the EU level or through the accession negotiations

The *acquis* in the areas of public procurement concerns fundamental Treaty principles, which means that there is no prospect of derogations or transitional arrangements as regards the general application of the rules.

Even though the EU legislation for public procurement is currently under revision, Serbian municipalities would appear to have little to gain from attempting to influence EU institutions in this area. It may make sense to focus limited lobbying opportunities at EU level on areas where there are both particular interests for Serbian municipalities and scope for transition periods or similar (such as environment).

Nevertheless, the revision of the public procurement framework provides an interesting case study of the capacity to influence legislative developments through the Committee of the Regions (CoR). As noted above, in October 2012 the CoR adopted a critical opinion (drafted by a Swedish member with the assistance of SALAR experts) on the proposed revisions to the public procurement directives.

By the end of the year, many of the concerns raised were reflected in amendments to the text. However, the experts in question were also in contact with the European Parliament's rapporteur and participated in preparing the Swedish government's position on the revised legislation. It is therefore impossible to say how much direct influence the CoR's report had, and how much occurred through the Parliament and Council. Direct contact between SALAR experts and the European Commission on procurement tends to be confined to technical questions, for example participation in an expert working group on electronic procurement.

1.4.2. Influence at the national/provincial level, including on transposition of legislation

In the case of public procurement, transposition into national legislation is an important issue for local authorities. In several countries, national authorities have made the rules stricter and/or more cumbersome than the EU directives require. (For example, in Sweden, there are also rules for procurement below the EU thresholds and stricter rules for 'Part B' services.)

Furthermore, according to the current public procurement proposals, member states have discretion over whether contracting authorities (including local authorities) may use the more flexible procedures (the new 'innovation partnership' procedure or, in certain situations, competitive procedure with negotiation or competitive dialogue).

Municipalities may therefore have an interest in persuading central government that the EU procurement rules are sufficiently complex and demanding as they stand, and that there is a good case for approximating national legislation as closely as possible to the new EU framework so as to avoid additional complications. In particular, there would be no need according to this view to impose the same requirements for competitive tendering, remedies and so forth for contracts below the thresholds.

One model that may be worth pursuing in this and other areas is for SCTM to provide advisory services to municipalities jointly with the national authorities. In Finland, for example, there is a Public Procurement Advisory Unit run jointly by the Ministry of Employment and the Association of Finnish Local and Regional Authorities (Lundström 2011).

1.4.3. Preparations at local level including support from SCTM

While the national framework for public procurement is relevant, the most important step that local authorities can take to maximise the net benefits (or minimise the net costs) of EU accession in this area is probably training and awareness-raising at the local level. A basic understanding throughout the organisation of the need to carefully follow procurement procedures can help to avoid costly mistakes.

Specialist procurement officers clearly need detailed knowledge of the relevant rules and procedures, and the potential pitfalls, and will need at

least the delegated authority within the organisation to make sure that others abide by the rules. (For instance, procurement officers will often need to coach other colleagues on how to avoid vague or discriminatory terms in tender specifications or on the need to avoid providing preferential information to certain bidders.)

In addition, expert legal advice on procurement should be readily available to municipal staff. The national ministry that oversees the transposed procurement legislation is a natural partner here, but SCTM can play a role in supporting the national authorities and seeking to ensure that the rules are not interpreted too restrictively from the perspective of local interests.

1.5. Indicators of potential outcome

Formally, most of the rules on public procurement will already apply in Serbia well before accession. However, judging by the experience of other countries, there are likely to be significant implementation gaps, and enforcement (whether by national or EU-level authorities) is sure to be stepped up. In any case, even if part of the impact in these areas occurs in the pre-accession phase, most of it can be ascribed to EU accession.

It would seem that enforcement of the national rules has been relatively lenient so far, but the strengthening of administrative capacity for remedies (as noted in section 1.3) means that local authorities can expect to see more challenges from unsuccessful bidders over the coming years.

There are perhaps two main questions to address in assessing the impact of the EU rules. First, if local authorities follow all procedures correctly and efficiently, what do they stand to gain or lose? Estimates from the European Commission (2011, p. 20) suggest that greater competition and transparency leads to a reduction in prices of around 2.5 to 10 per cent compared with contracting authorities' expectations. Against this must be balanced the administrative costs of tender procedures, estimated at a total of 1.3 per cent of the value of invitations to tender (including costs to bidders as well as the administration) and the duration of the procedures.

However, for local authorities, the balance of costs and benefits is likely to be rather less favourable, since most of their contracts tend to be relatively low-value and of limited cross-border interest. If bidders remain mostly local or national, the expected cost savings will be lower (though experience suggests that there are still benefits from increased transparency and competition in the in the form of increased interest from national bidders).

For low-value contracts, administrative costs as a share of contract value tend to be significantly higher. For example, at the median contract value of € 390,000, costs may amount to 6 to 9 per cent (European Commission 2011, p. 19). The cost per contract of keeping procurement staff up to speed on EU procedures is also likely to be higher in smaller local authorities, which might deal with only a few contracts per year valued above the € 200,000 threshold.

It is difficult to conclude on this basis that the extra administration required to implement EU procurement standards will result in substantial net savings.

More significant, perhaps, is the removal of opportunities to promote local businesses and jobs. An objective assessment is more difficult here, since it depends on one's view of the effectiveness of local economic development measures (taking into account that one municipality's gain may be another's loss). It may be argued that one of the greatest benefits of EU-inspired procurement procedures is that they serve as an additional obstacle to patronage and corruption.

The second question is the extent to which local authorities will be able to implement procedures correctly and efficiently. The cost of fines, damages and financial corrections (e.g. in the case of procurement mistakes in EU-funded programmes) may be significant in individual cases. But there are also substantial administrative costs involved in having to reopen procedures and deal with legal challenges [10].

10 For example, generally a time limit of at least 52 days for receipt of tenders under the open procedure, plus time to evaluate bids, plus a standstill period of 10 days before the contract can be signed.

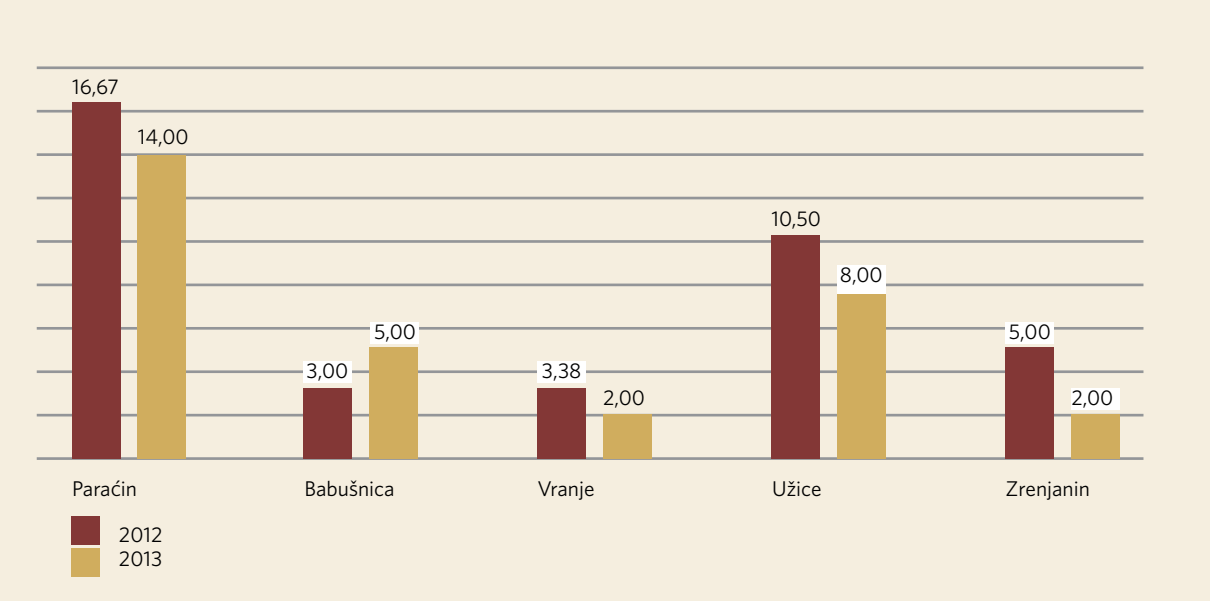


Figure 1.1: Number of public procurement procedures per employee working on public procurement in 2012 and 2013

In Sweden, where administrative costs of public procurement are slightly below the average for the European Economic Area as a whole (see European Commission 2011, p. 18, Fig. 9), the number of appeals increased a hundredfold after the transposition of the EU rules. Around 3,000 appeals per year now go to court, of which around one-third result in the re-opening of the procedure. This provides an indication of the degree of disruption that may be expected even in a reasonably efficient administration.

There is striking variation between member states in the average administrative costs of procurement procedures, from a little over 10 person-days in the best-performing countries to nearly 70 person-days in the worst (*ibid*). There are recently acceded member states among both the best and the worst performers. A rough indication of the difference between the best and worst cases for the country as a whole could thus be given at 60 person-days per contract, multiplied by estimated salary costs and the expected average number of above-threshold contracts per municipality per year.

For Serbia, the estimation of the salary costs is not easy at the moment. With an average salary in the public sector of approximately € 650 including taxes (March 2013), an inefficient implementation of the public procurement rules could cost as much as € 1,300 per contract compared to the best-case scenario (70 person-days per contract compared to 10). However, this estimate is far from precise because the efficiency of the employees working on public procurement procedures varies considerably between municipalities (see the figure below). Although some of these employees also have other responsibilities it is clear that their efficiency and consequently salary costs per procedure differ markedly. In addition this estimate does not includes other possible costs such as costs of commission members fees where applicable (see Figure 1.1).

Case study evidence from the UK Local Government Association (2011) also suggests substantial variation between local authorities in the same country, with the costs of running a restricted procedure ranging from £ 1,500 to £ 13,000 (c. € 1,750 to € 15,000) in different but similar districts. Contract values are not given, but comparing again with the EU median contract value of € 390,000 suggests a range of approximately 0.5 to 3.8 per cent (although some of this variation is likely to be due to differences in the types of goods and/or services being procured).

These figures suggest that the national framework and local capacity to implement procedures efficiently will be critical factors in determining the impact of EU public procurement rules at the local level. With effective preparation, the costs can be kept reasonably low and are more likely to be outweighed by the benefits. But the outcome may be considerably worse if national authorities

add extra layers of complexity to the procedures and local authorities are poorly prepared.

Figures from Sweden (SOU 2011): of a little over 19,000 procurement procedures carried out by contracting authorities in Sweden, around 25 per cent are above the EU thresholds. However, larger authorities (including national ministries, agencies, etc.) account for the greater part. Most authorities carried out only a few procedures, and around 30 per cent (328 authorities) carried out only one. This presumably includes many smaller local authorities, although the figures are not broken down by type of authority.

However, a key issue for local authorities in Serbia is that the thresholds in the national law on public procurement are substantially lower than the EU rules require. Whether this should be seen as a consequence of accession or not is debatable. Nevertheless, it means that even smaller local authorities will have to carry out more formal procurement procedures (and presumably deal with more legal challenges) than their counterparts in other member states. This makes it all the more important to ensure efficient implementation of the procedures at local level and/or to persuade the national authorities to revise thresholds or to avoid unnecessary complications for low-value contracts.

As an example of costs for the association, SALAR has 3.5 posts dedicated to public procurement – training (including 3-day basic courses), telephone support, representation in court, contact with the national and EU authorities, lobbying and information to local officials. Of course external lawyers and experts could provide some of these services, though most likely at higher cost to municipalities.

If local authorities were to prove manifestly incapable of implementing procurement procedures effectively, there may also be a risk to local autonomy in the form of increasing centralisation of procurement procedures. The European Commission notes increasing use of central procurement bodies in its latest implementation report:

> Government administrations, at both central and local levels, are increasingly using specialised bodies, such as central procurement bodies (CPBs), while greater use of framework contracts is changing the nature of the procurement function.

It goes on to note that the use of central procurement bodies is generally compulsory only for central government authorities. Others, including local authorities, may be encouraged to use such bodies, but may also set up their own group purchasing arrangements. In practice, many of the goods and especially services that need to be procured are local in nature, so that it is difficult to see how centralised procurement could be efficient in all cases.

2. State aids

2.1. Overview of the impact of accession on local authorities

EU rules on state aids also have a profound influence on local authorities' roles as purchasers, contractors and promoters of local enterprise. As in the case of public procurement, the impact at the local level has often been underestimated in previous enlargements.

Local leaders and officials have not always been aware that measures such as tax exemptions, property purchases on favourable terms or local authority use of public services (without competitive tender) might constitute illegal state aid. The effects for favoured companies or organisations are potentially devastating, since they may have to repay the aid with interest (even if that means bankruptcy). For local authorities themselves, the effects may also be severe. Although they stand to recover aid illegally paid, they may face disruption to the activities concerned, annulment of transactions and financial losses in the case of joint ventures.

Implementing the state aid rules is expected to generate benefits in the form of cost savings through greater competition and transparency, even at the expense of reduced discretion in local politicians' and officials' use of the public budget. Administrative costs are less of an issue than in the case of public procurement since there are no complex ex ante procedures to follow at local level. The principal cost may be seen as the risk of being found in breach of the rules *ex post*.

The best that local authorities can do to prepare is to raise basic awareness of the state aid rules among all those whose decisions may affect the public budget. Since it is scarcely feasible for individual local authorities to maintain the level of legal expertise needed to master the relevant legislation and case law, they will have to rely on legal advice and/or cooperation with their association and with the national state aids authority when it comes to detailed application of the rules (for example in assessing whether potentially contentious aid schemes or transactions are covered by one of the various exemptions).

2.2. Key aspects of the EU *acquis* and related issues for local government [11]

The key element of the EU *acquis* in state aids is Arts 107–9 TFEU [12] (and the accumulated decisions of the Commission and judgments of the Court in this field). In essence, the Treaty prohibits aid that might distort competition by favouring certain undertakings (not only companies) that produce tradable goods or services. There are some exceptions to this, but any aid that is thought to be permissible must, as a general rule, be notified in advance to the European Commission for prior approval.

Detailed rules for monitoring and control are given in:

Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (now Article 108).

Prior notification implies a significant burden on local authorities given the need for preparation (together with the national authorities) and a likely delay of at least 6–9 months (longer in less straightforward cases) before approval.

11 See European Commission (2013) for a compendium of all the state aid rules currently in force. The table of contents alone runs to 10 pages, which serves to underline the complexity of the field, especially where sector-specific rules come into play.

12 Treaty on the Functioning of the European Union. Note that article references in the titles of legislation often refer to earlier Treaty revisions. As regards state aids, references to Arts 92–3 and 87–8 should now be read as 107–8.

However, granting illegal aid (which includes non-notified aid even if subsequently approved) may result in suspension of payments, recovery of amounts paid with interest, annulment of the transactions concerned up to 10 years after the event and fines for the member state (which in some countries can be passed on to the offending local authorities).

The EU state aid rules often come as something of a culture shock to local politicians and officials. Even if the more blatant forms of aid (direct subsidies to local enterprises, for instance) were already restricted under national law, the EU rules address less obvious sources of advantage, such as property or land transactions on favourable terms, contracts not open to competitive tendering, funding of non-profit organisations, discretionary tax breaks to certain enterprises, and free or subsidised training (to give just a few examples).

This said, it should also be clear that not all public funding constitutes state aid. The prohibition does not apply, for instance, to general measures available to all economic undertakings in the country, aid to public bodies not involved in economic activities, support for general infrastructure projects that do not benefit particular users, full market value purchases of goods and services (e.g. procured under the procedures outlined in the previous chapter) and aid to individuals or employees that does not directly benefit an undertaking. In addition, support to public bodies provided according to the 'market economy investor principle' (in essence, support that a private investor would provide in similar circumstances) is allowed, although this is not always easy to judge or to demonstrate.

Aid may be judged compatible with the internal market if it falls under one of several exemptions. These are set out in a series of guidelines, frameworks and other communications on aid for environmental protection, research and development, rescuing and restructuring of firms in difficulty, regional development, services of general economic interest (see chapter 3 below on communal services) and several specific areas and sectors such as risk capital in SMEs, electricity, broadband infrastructure and railways. Aid in these areas must still in general be notified to the Commission, which will decide whether or not to approve it on the basis of criteria given in the relevant framework or guidelines.

For 'areas where the standard of living is abnormally low or where there is serious underemployment' (Art 107(3)(a) TFEU), the regional aid guidelines are of special importance [13]. These relax the rules in several respects, allowing investment aid to large as well as small and medium-sized companies and (in limited circumstances) operating aid, provided as a general rule that this is granted under a multi-sectoral regional development strategy. Maximum allowable intensity for aid to large companies varies with regional GDP per capita: 25, 35 or 50 per cent for regions with GDP per capita below 75, 60 and 45 per cent of the EU-27 average respectively. Ceilings may be increased by 20 per cent for aid granted to small enterprises and 10 per cent for medium-sized enterprises. Lower ceilings apply to 'large investment projects' (over €50m). The Commission adopted a new set of regional aid guidelines for the period 2014–20 in June 2013 [14].

Essential points to note about regional aid include:

- Total public support (local, regional and national as well as EU) is counted in evaluating aid intensity.
- Aid that may be allowed under the regional aid guidelines must still as a general rule be notified in advance to the Commission. Further conditions laid down by the block exemption regulation (see below) must be satisfied to avoid pre-notification. For instance, large enterprises receiving regional investment aid must demonstrate that the investment would not otherwise have taken place. Aid to particular sectors (with the exception of tourism) must be notified regardless.

The proposed regulations for cohesion policy during the period 2014–20 further increase the scope for using 'financial instruments' such as the current JESSICA (Joint European Support for Sustainable Investment in City Areas) initiative [15].

13 To date, these have been taken to be the same as 'less-developed regions' under cohesion policy (i.e. those with GDP per capita below 75 per cent of the EU average), which means that the whole of Serbia would qualify at present. For less disadvantaged regions, 'aid to facilitate the development of certain economic activities or of certain economic areas', is also allowed under Art 107(3)(c) with ceilings of 10–30 per cent for aid to large companies. These regions are not the same as 'more developed' or 'transition' regions under cohesion policy; rather, a more geographically concentrated list of areas eligible for support must be agreed with the Commission.

14 EUROPEAN COMMISSION, Guidelines on regional State aid for 2014-2020, Official Journal of the European Union, 2013/C 209/01, 23 July.

15 KPMG (2011) provides a useful overview of this and other similar instruments and their employment in central and eastern Europe.

This entails paying EU regional aid into revolving urban development funds for use as loans, equity stakes, etc. It is potentially a useful instrument for city authorities but also serves to illustrate the complexity of state aid issues, since there are at least three categories of undertaking that might be favoured: the managers of the fund, private investors contributing to the fund and organisations that benefit from project support.

There are also Treaty provisions and further specific rules for certain sectors (including agriculture and fisheries, coal and steel, synthetic fibres and transport), which take precedence over general guidelines. In transport, for instance, Art 93 TFEU says that aids 'shall be compatible … if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service'.

Lastly, there are also exceptions to the general rule that prior notification is required. These are covered by the block exemption regulation and the de minimis regulation:

Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation)

Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid.

These regulations are adopted by the Commission by virtue of the so-called Enabling Regulation:

Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 87 (former Article 92) and 88 (former Article 93) of the Treaty establishing the European Community to certain categories of horizontal State aid.

The current block exemption covers 26 categories, including regional aid; environmental protection (e.g. encouragement of investment in energy saving and renewable energy); small and medium-sized enterprises (SMEs); research; development and innovation; training; and disadvantaged or disabled workers. Several conditions must be fulfilled for the block exemption to apply. In particular, the aid must create beneficial incentives, transparency criteria must be fulfilled, and there are limits for each category on aid intensity (the share of total costs that may be covered), eligible costs and the maximum amount of aid.

As regards regional aid, it should again be underlined that the block exemption is far from a carte blanche for authorities in less-developed regions. In particular, to be exempted from pre-notification, aid must be in a 'transparent' form [16], which means that local authorities may still be caught out by unexpected types of aid (e.g. tax breaks, property transactions, non-competitive contract awards). Moreover, it is not necessarily safe to assume that funding of projects through the EU structural funds or the Instrument for Pre-accession Assistance is compatible with the state aid rules.

The de *minimis* rule exempts aid amounting to less than € 200,000 over a rolling three-year period, again provided that transparency criteria are fulfilled. The threshold is € 100,000 for road transport, and certain other areas including fisheries and primary agricultural production are excluded. A new regulation on de *minimis* aid granted to undertakings providing services of general economic interest sets the threshold at € 500,000 in many areas of relevance to local authorities (see section 3.2 below).

These provisions do not mean that local authorities can grant small amounts of aid as they see fit. They will need to verify the total amount of de *minimis* aid received by any one recipient to ensure that thresholds are not breached. And general treaty provisions still outlaw, for example, aid that discriminates on grounds of nationality.

The legislative framework for state aids is currently undergoing extensive revision. Following a Commission Communication on the overall approach in 2012, the Council has already adopted revisions of the so-called Enabling and Procedural regulations [17]. Other revisions, including revised regulations on the general block exemption and de *minimis* regulations and various sets of guidelines, are ongoing.

16 This may include grants and interest rate subsidies, loans where gross grant equivalent takes account of a reference interest rate (calculated according to a Commission Regulation), guarantee schemes, fiscal measures (with a cap) and some types of repayable advances.

These revisions are likely to involve significant changes to and consolidation of the various exemptions, so that it may be advisable for Serbian municipalities to focus on the revised rules rather than the details of the current framework (although it should be stressed that municipalities are already supposed to be in compliance with the current framework – see section 2.3 below).

Among the practical issues faced by local authorities:

- basic lack of awareness of what may count as illegal state aid, which often leads to complex and costly problems that could have been avoided if state aid concerns had been addressed earlier in the policy process
- legal uncertainty (even for experienced staff) over whether certain measures count as state aid or which of the various guidelines, frameworks and sector-specific rules may be relevant
- the need, even in the case of relatively straightforward cases falling under the de *minimis* or block exemption regulations, to ensure that all conditions are met, including record-keeping, reporting and notification requirements (even though advance notification is not required).

As part of the modernisation of the state aid rules, the Commission says it intends to focus enforcement on cases with the biggest impact on the internal market, while 'the analysis of cases of a more local nature and with little effect on trade should be simplified. [This] could be achieved by defining more proportionate and differentiated rules and by modernising State aid control procedures, with increased responsibility of Member States in designing and implementing support measures. [18]

2.3 Comparison with Serbian legislation and practice

According to Art. 38 of the EU–Serbia Interim Agreement on trade and related matters [19], the EU rules on state aid already apply for the most part (they 'need not' apply to agriculture and fisheries, and there are special rules allowing for exceptional restructuring aid to the steel industry). The State Aid Control Act, adopted by the Serbian parliament in July 2009, charges the Commission for State Aid Control (CSAC), established under the Ministry of Finance and Economy, with enforcement. Aid schemes instituted before the establishment of the authority are to be aligned with the EU criteria within four years from the entry into force of the Interim Agreement (i.e. by February 2014).

CSAC's September 2012 report on state aid in 2011 includes limited data on aid provided by local self-governments. Answers were provided by 50 local authorities, of which nine 'granted state aid pursuant to the Law' (p. 5). It appears from the report (p. 18) that these authorities granted RSD 135 million (c. € 1.2 million) in total, and that CSAC has classified all of this as regional aid.

The legal framework for state aid control in the Republic of Serbia comprises:

- Law on Control of the State Aid (*Official Gazette of the Republic of Serbia, No. 51/09*)
- Decree on the Rules for the Allocation of State Aid (*Official Gazette, Nos. 13/2010, 100/2011, 91/2012 and 37/2013*)
- Decree on the Manner and Procedure on Reporting State Aid (*Official Gazette, No. 13/10*) and
- Rulebook on the Methodology of the Annual Report on Granted State Aid (*Official Gazette of the Republic of Serbia, No. 3/11*).

The Decree on the Rules for the Allocation of the State Aid regulates all elements of the system of state aid disbursement. It defines the criteria by which specific budget appropriations and other acts of the government are to be considered as state aid. Financial and non-financial measures that do not qualify as state aid should not be reported to the Commission for State Aid.

17 COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, EU State Aid Modernisation (SAM), COM(2012) 209 final, Brussels, 8.5.2012.

Council Regulation No. 733/2013 of 22 July 2013 amending Regulation (EC) No 994/98 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid, Official Journal of the European Union, L204, p. 11, 31 July.

Council Regulation No. 734/2013 of 22 July 2013 amending Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, Official Journal of the European Union, L204, p. 15, 31 July.

18 COM(2012) 209 final (see previous note), paragraph 19.

19 In force since 1 February 2010, this contains relevant provisions on trade and related matters pending the entry into force of the full Stability and Accession Agreement (which awaits ratification by the last remaining member state, Lithuania).

The Decree on the Rules for the Allocation of the State Aid regulates all elements of the system of state aid disbursement. It defines the criteria by which specific budget appropriations and other acts of the government are to be considered as state aid. Financial and non-financial measures that do not qualify as state aid should not be reported to the Commission for State Aid.

This decree is a cornerstone of the legal framework for state aid in Serbia, and a thorough understanding of its inner logic is indispensable when it comes to evaluating the content and scope of the established system of state aid control.

Strictly speaking, all provisions of the decree are in line with relevant EU legislation and jurisprudence from the Court of Justice. For example, provisions from the Decree on state aid on so-called Altmark compensation to companies that perform services of general economic interest are identical to the EU *acquis* (see section 3.2 below on the conditions under which public funding for services of general economic interest (SGEI) is not to be regarded as state aid). Thus, according to the Decree, public utility enterprises whose founders are 100 per cent local authorities and who provide SGEI may receive permissible state aid (subsidies not exceeding € 30 million per year) even if they are not selected by a public procurement procedure.

However, the Decree omitted to include the provisions of Commission Decision No. 842/2005 (also known as the SGEI decision) which requires the state to carry out regular checks to ensure that companies do not receive compensation in excess of the amount sufficient to cover costs and reasonable profit. Article 97 (g) of the decree requires each undertaking that receives compensation to keep separate accounts for compensated services and other services, thus facilitating the necessary controls. However, the procedure for such controls and the body responsible for performing them (CSAC, for example) have yet to be nominated.

Among the other impediments to the effective implementation of state aid regulation:

- CSAC lacks autonomy, being established as a part of the Ministry for Finance and Economy (paradoxically, since the Ministry itself is one of the major grantors of state aid).
- CSAC's resources are inadequate when it comes to controlling the legality of all direct and indirect interventions of the state, provincial and local governments that might be characterised as state aid.
- The obligation imposed on undertakings providing SGEI in Serbia to define tariffs that cover costs plus a reasonable profit (which is the ultimate requirement for implementation of the Altmark rule in Serbia) lacks practical expression. Low tariffs are set without any reasonable economic justification and founders (the state, autonomous provinces and municipalities) usually cover loses from the general budget.
- Criteria for regional investment aid are too broad and vaguely set, which allows arbitrary definition of state aid schemes.

All Serbian cities and municipalities have been contacted by CSAC and are aware of the obligation to report state aid. Certain forms of state aid are exempted from notification – that is, declared *ex lege* as a legal state aid. These forms of state aid are exactly the same as those exempted in the EU *acquis* (general block exemptions, de *minimis* aid, Altmark-type compensation and aid to SGEI undertakings if defined criteria are met). The Law on State Aid refers to aid which is deemed allowed and aid which 'may be allowed'.

Serbian cities and municipalities are still not aware of the very complex regulation that governs state aid. Every local government in Serbia at the moment has at least one state aid scheme – such as tax exemptions for new investors, revolving funds, budget subsidies for small and medium enterprises or land disposal free of charge for strategic investors. Despite the fact that majority of the local state aid schemes are de *minimis* state aid, it should be noted that even the most developed cities and municipalities do not have comprehensive inventories of their state aid schemes. Bearing this in mind, it is reasonable to assume that even those 50 cities and municipalities that have reported some forms of state aid have not reported all of them (since they are not trained and skilled to recognise state aid in what may for them be familiar procedures).

State aid and local public enterprises (see also chapter 3)

A lack of transparent procurement procedures in the case of local public enterprises considerably raises the risk of problems under the EU state aid rules. The 2011 Survey of local practice in the

European Bank for Reconstruction and Development's Public Procurement Assessment Report (EBRD 2011) puts Serbia in last place, out of all countries included in the sub-region (Albania, Bosnia and Herzegovina, Montenegro, Serbia, Macedonia and Turkey). The report notes that in Serbia (along with two other countries in the region – Montenegro and Turkey) the utilities sector is still not effectively covered by public procurement regulation. The utilities sector procurement (public services monopoly) is outside the scope of public procurement laws in Serbia. Namely, procuring entities are not mandated to apply the Law on Public Procurement when they procure goods, works or services from a public entity which is granted an 'exclusive right to render services which are the object of public procurement.' This provision is retained also in new Law on Public Procurement (see the previous chapter). The new law (see Article 7, Paragraph 1) exempts procuring entities from the obligation to implement the public procurement regulations when contracting public companies as service providers. The main concern of the EBRD observers relates to the direct contracting of public utility companies (PUCs) by their own municipalities (often for major works such as the extension of water distribution systems but also for general construction works and public services like maintaining of the green areas, winter maintenance or street cleaning) as well as to the procurement practices of the PUCs themselves.

The draft Strategy for PUC Restructuring in Serbia, prepared by the previous government in 2008, points out that 'PUCs ... receive municipal projects as contractors for construction of facilities often without organizing tendering procedures' and that ' … "profit" from construction … projects is often used to cover losses in the main activities of the PUC' (Section 4.5.1 of the Draft Strategy). The Draft Strategy recommends for the future that 'contracts between a PUC and a municipality in the area of construction of utility facilities and infrastructure should be organized with respect for the Law on Public Procurement'. The present practice of direct contracting of the PUCs, usually by the Land Development Directorate of the municipality, is considered harmful because it excludes private contractors from competing for construction contracts, results in high-cost 'sweetheart contracts' favouring PUCs and permits the subsidisation of the core services provided by PUCs.

State aid and disposal of land at below market price

Disposal of land below the market price is governed by the Decree on the Conditions and Manner under which Local Self-Government Units May Sell or Lease the Building Land at a Price Below the Market Price or Lease Fee or without Compensation (Official Gazette of the Republic of Serbia, no. 13/2010). This Decree sets the criteria based on which the cities and municipalities may dispose of building land at a preferential price or free of charge and lays down a specific procedure for this. The criteria under the Decree are the following: that it is an economic development project, meaning a project that increases employment in the local economy by at least 1 per cent, or that it is a project of social housing construction, subsidised housing construction or construction of utility infrastructure facilities. As a general principle, the reduction in price compared to the market price cannot be higher than the expected increase in public revenue from the investment over a period of five years from the conclusion of the contract. The land may only be given free of charge if the investment is realised in underdeveloped cities and municipalities (the list of which is determined by the government). The disposal of the land at a price lower than the market price or free of charge is approved by the Government of the Republic of Serbia based on a cost/benefit study prepared by the city or municipality.

Municipal ordinances on construction land, on land development charge and land use charge and on communal fees

Local government, pursuant to its authority, may decide to grant certain benefits to undertakings that construct facilities and infrastructure in the territory of so-called free or industrial zones. These benefits include exemption from payment of local taxes, fees and charges that local governments are responsible for collecting, such as charges for municipal land development and land use, fees for city planning conditions and agreements, fees for water supply and connection to the sewage system and local communal charges.

State aid and financial support to SMEs

Almost all Serbian cities and municipalities have some kind of funding mechanism to provide financial support to business: SMEs, entrepreneurs (small shop owners not registered as legal entities)

and/or agriculture households. The differences between these schemes are numerous, with few similarities. Some local authorities fund only entrepreneurs and agricultural households, while others fund both entrepreneurs and SMEs (legal persons). Some local authorities provide finance to unemployed people to start a business and to municipal services for the engagement of young interns.

Local governments as a rule provide financial support for *acquis*ition of fixed assets (with lifespan longer than three years). Some cities and municipalities provide loans to entrepreneurs and to agricultural households.

Administration of programmes may be assigned either to an existing legal entity (for example the Directorate for Commodity Storage) or to a newly created legal entity (for example a special fund). In some cases a programme may be administered through a simple budget line (appropriation in the annual budget).

All key decisions (criteria, amounts of financing, decisions on awards, etc.) are assigned to a commission whose members are usually appointed by the Mayor. There are no clear criteria for selection of commission members. In general, members are drawn both from representatives of the municipality (whether elected or municipal staff/employees) and from the business community, usually from the local entrepreneurs' association. Political considerations might have a role in appointing members of the commission. Those aspects of the administration of funds that are not outsourced to a bank or another legal entity are performed by the municipal administration – usually the departments for local economic development, finance and/or agriculture.

Very often, decisions on matters such as the maximum amount of loan that may be granted are discretionary. The criteria for such decisions are not consistent, or are simply not determined in advance, so that whether an applicant will receive € 20,000 or € 50,000 is an arbitrary decision for commission members in each individual case.

De minimis rule

State aid of small value is regulated entirely in line with the EU rules and jurisprudence on *de minimis* aid. *De minimis* aid can be granted regardless of purpose, except for coal mining, the procurement of the road freight vehicles in undertakings which perform road freight transport, export initiatives that establish or enable functioning of the distribution network or other expenditures connected with export activities. *De minimis* state aid of up to € 200,000 in RSD equivalent can be granted to individual undertakings (except in road transport, where the amount is € 100,000 in RSD equivalent) in any given period in three consecutive years.

Local authorities' liability for damages in the event of illegal state aid

Arrangements whereby national authorities pass on damages for infringement of the EU state aid rules to the responsible local authorities are not currently envisaged in the Serbian legislation. However, in theory it would not be impossible to introduce such an arrangement, since some precedents already exist. Namely, Government is entitled to withhold municipal transfers (general transfers from national to local budgets) if municipalities do not obey certain strict financial discipline rules (for example, if they do not pay commercial suppliers within the maximum deadline of 45 days).

2.4. Capacity to affect the outcome

2.4.1. Influence at the EU level or through the accession negotiations

The *acquis* on state aids concerns fundamental Treaty principles, which means that there is no prospect of general derogations or transitional arrangements. Indeed, as noted, the rules already apply for the most part, at least in principle.

Provisions regarding specific instances of state aid may be made in the accession treaty. However, this cuts both ways. On the one hand, long-standing aid measures and other schemes approved by CSAC before accession may be designated as 'existing aid' (in the meaning of Art 108 of the Treaty), which means that the EU Commission may raise objections but may not require reimbursement of sums already paid. On the other hand, the Union may require repayment of aid illegally granted prior to accession but after the entry into force of the Stability and Accession Agreement (or Interim Agreement).

Both types of provisions are found, for example, in Croatia's accession treaty [20]. In particular, the negotiators agreed that aid to a major steelmaker since 2006 would have to be repaid, while

restructuring aid to shipbuilders will be repayable if these have not been restructured and privatised before accession. It may seem unlikely that lower-profile aid schemes run by local authorities would be addressed in this way. Nevertheless, municipalities might consider asking national authorities to designate aid as 'existing aid' if they are concerned that certain schemes might attract unwelcome attention from the EU Commission post-accession.

As in the case of public procurement, even though the state aids framework is currently under revision, there seems little to gain for Serbian municipalities in attempting to lobby EU institutions directly in this area. (Although participation in European networks of local authorities may be helpful in becoming familiar with the application of the rules, pitfalls to avoid, latest legislative developments and so forth.)

2.4.2. Influence at the national/provincial level, including on transposition of legislation

The *acquis* on state aids takes the form of Treaty obligations and Regulations that apply directly, so that national transposition is not required. However, there may still be national state aid rules or practices that are stricter than the EU rules. In Sweden, for example, the Swedish Local Government Act contains restrictions on support to industry, under which aid has been prohibited even where this included support from the EU structural funds[21].

In addition, since it is the member state that is responsible for notifying aid to the Commission, local authorities will presumably be required to provide the national authorities with information on local aid granted. And given the legal complexity of the field, local authorities tend to be heavily reliant on national authorities for advice. Thus, even if the national rules are no stricter than the EU rules, the national authorities (CSAC) are still likely to be influential in practice in deciding what kinds of aid may or may not be allowed. This suggests a role for SCTM in liaising between local and national authorities and in ensuring that the latter do not interpret the rules too restrictively.

The national authorities may welcome a contribution from SCTM since they are under pressure to improve coordination between CSAC and aid grantors. From the EU Commission's latest progress report on Serbia:

> … further efforts are needed to make aid grantors notify their projects before State aid is disbursed and to ensure the timely alignment of existing State aid schemes. The Commission's [CSAC's] enforcement record needs to be strengthened and its operational independence is still to be demonstrated. Cooperation and coordination needs to be stepped up between the CSAC and all bodies granting State aid[22].

National or provincial authorities can also help by notifying schemes to the Commission in areas such as renewable energy, research and development, restructuring aid to SMEs, and so forth. This may provide legal cover for local authorities wishing to grant assistance under these schemes, without the need for them to submit a new notification.

2.4.3. Preparations at local level including support from SCTM

Basic awareness-raising at the local level is probably the most important step that local authorities can take to maximise the net benefits of accession in this area. Moreover, it is not only legal or EU experts who need to know about the state aid rules, but anyone else in the organisation who may take decisions with relevance to the public budget, whether or not their area of responsibility is affected by accession[23].

Legal advice on state aids must be readily available to municipal staff since it is unrealistic to expect all but the largest local authorities to maintain the necessary level of expertise. National ministries and agencies, in particular CSAC, are natural partners, but SCTM can play a vital role in liaising between local and national authorities, seeking to ensure that the rules are not interpreted too restrictively, and perhaps in providing qualified advice directly to municipalities.

20 See in particular Art 16 and Annex IV, Art 36(1) and Annexes VIII and IX.

21 See Statskontoret (2005, p. 29) on the Hollyhammar case (in Swedish). See also chapter 4.

22 COMMISSION STAFF WORKING DOCUMENT: SERBIA 2012 PROGRESS REPORT, SWD(2012) 333 final, Brussels, 10.10.2012.

23 A case in point from Sweden concerned the development of Åre town square (in part for the Alpine World Ski Championships in 2007), where the municipal council asked a supermarket chain to sell its building in the town square, and partly in return sold it a piece of land elsewhere in the municipality at below the market price. Case T-244/08 – Konsum Nord v Commission.

Best practice on state aids means assessing the possibility that a measure might constitute state aid as early as possible in the policy process. As the UK government puts it, 'Seeking advice is not a last resort: the earlier the better, to avoid problems later on' (Department for Business, Innovation and Skills 2011, p. 8). Measures can often be redesigned to avoid state aid altogether or to ensure that they fall under an exemption without changing their essential character or desired impact.

A useful first step, at least for those local authorities that have not begun reporting local aid to CSAC, would be to compile an inventory of local measures that might be classified as state aid, and look at how each measure might be restructured to minimise state aid risks while still pursuing legitimate policy objectives.

2.5. Indicators of potential outcome

Even though the state aid rules already apply in principle (for the most part), enforcement (whether by CSAC or the EU Commission) is sure to be stepped up along with accession. In any case, the impact can be largely ascribed to accession even if part of it occurs beforehand.

There are few formal routines to follow in implementing the EU state aid rules. However, administrative and legal costs may be significant in individual cases where there is uncertainty over the rules or where notification to the EU Commission is required.

Perhaps the principal cost may be seen as the risk of granting, unwittingly or otherwise, unauthorised state aid. Actual costs then clearly depend on the transactions in question, but they may be substantial even though, on the face of it, the aid-granting authority stands to recover illegal aid. For example, recovery of aid to a public service provider may result in bankruptcy of the company in question, leaving the local authority to foot the bill for continued services. In the case of property deals, as another example, recovery may involve attempting to undo a complex web of transactions (going back as far as 10 years), which may leave the local authority open to legal challenges from many affected parties.

From the overview in section 2.3 it is clear that problematic practices such as direct award of contracts, sale of land at below the market price, financial support to enterprises, exemption from taxes and so forth are relatively common in Serbian towns and municipalities. The impact of accession in this area will thus depend largely on SCTM's and local authorities' success in raising basic awareness on state aids and in adjusting local policy to minimise the associated risks.

The potential consequences vary somewhat according to the type of aid in question. Property and land transactions at below market price are generally difficult to justify and will in any even be regarded as state aid that must be notified. Direct contract awards to public utility companies may be allowed if certain conditions are satisfied (see chapter 3). Financial assistance to small and medium-sized enterprises may be allowable under one or more category of block exemption (i.e. without the requirement to pre-notify the EU Commission), including regional and de minimis aid, provided that the relevant conditions are met (for instance, that aid is part of a coherent regional development scheme, or that careful records are kept in the case of *de minimis* aid.)

Nonetheless, it seems clear that at least the manner in which local authorities grant aid to local enterprises will have to change in many cases. Local authorities may see the restriction of their policy options in this area as a cost. An objective assessment is more difficult here, since the benefits of a more discretionary approach are unclear, but it should be underlined that the various exemptions do leave open considerable scope for pursuing legitimate policy objectives, albeit in a more transparent manner than in the past.

3. Communal services

3.1. Overview of the impact of accession on local authorities

One issue of particular concern to local authorities in candidate countries is whether EU accession will expose local public services to competition from operators in other member states (not to mention domestic competitors). This applies particularly to services provided by companies that are owned and/or controlled by the municipality (referred to here as public utility companies or PUCs).

The rules on public procurement and state aids outlined in the previous chapters are highly relevant here, since the main risk is that in-house or arms'-length arrangements with PUCs might be regarded in law as non-competitive contract awards and/or illegal state aid that favours the operators in question. This chapter goes into more detail on the relevant EU *acquis* in these areas, covering the possible exemptions for public services. It also covers EU legislation on the freedom to provide services, under which local authorities may need to review the licensing, authorisation and regulation of some activities. It does not look at individual communal services but rather at the general rules applying to PUCs in most sectors. It is important to note that sector-specific rules in some cases (e.g. transport, electricity) are more lenient; thus the general findings here do not preclude the need for a detailed case-by-case assessment.

As a general rule, it is not safe to assume that local authorities can continue to award contracts and/or public funding directly to PUCs that provide services for which a market exists. In many cases it will be advisable to open up the process by defining public service obligations and selecting service providers by competitive tender. This means in principle that operators from any EU member state could bid, for example, for waste and water management contracts. Moreover, there are numerous examples of infringement proceedings against local authorities that have failed to appreciate this and continued to award contracts directly in areas such as these.

Whether there is likely to be interest in practice from operators in other member states is a different matter. Experience suggests that, even where there are no language barriers (e.g. between Austria and Germany), there are in fact rather few cross-border bids for relatively small-scale local contracts. It seems more likely that application of the EU rules will expose formerly preferred suppliers to competition from other domestic operators, although of course in many cases existing providers may well be best-placed to win competitive tenders.

But accession will entail at least the risk of upheaval for certain PUCs. It will also require local authorities and their associations to assess the full range of local services and determine areas where competitive tenders are advisable and/or public service obligations need to be clarified, whether public funding needs to be notified as state aid or adjusted so as to fall under exemptions, and whether procedures for licensing, regulation, etc. need to be reviewed.

This is a complex and still-developing area of EU law that continues to present challenges for existing member states. In Sweden and certain other member states, for example, it has only recently come to light that municipal subsidies to municipal-owned housing companies, enabling them to let residential property at below-market rates, may not be in conformity with the state aid rules. Thus, even though EU accession will not prevent municipalities from subsidising communal services and organising these to suit the needs of local users, subsidies may need to be granted and providers selected in a more transparent manner. As before, there are benefits in principle to local citizens from greater competition and transparency, although local authorities may feel that this restricts their policy options.

3.2. Key aspects of the EU *acquis* and related issues for local government

As noted in chapter 1, the public procurement rules are currently in the process of being revised, and one improvement from local authorities' perspective is that the new proposals codify EU case law on the application of the rules to 'in house' contracts – that is, contracts with subsidiaries controlled by the municipality (or several municipalities together). Contracts awarded to another public or private legal entity fall outside the scope of the rules if all of the following conditions are satisfied (from the latest draft):

- the authority exercises control over the entity similar to that which it exercises over its own departments (or several authorities jointly exercise such control)
- more than 80 per cent (although the figure is still under negotiation) of the entity's activities involve carrying out tasks for the controlling authority (or authorities, or other legal entities controlled by it/them)
- there is no private capital participation in the controlled entity.

Thus at first sight it might seem that contracts with publicly owned utility companies controlled by and operating almost exclusively for the municipality would not have to be put out to tender. However there are important caveats. To begin with, one or more of these conditions is very often not satisfied. Municipalities do not always exercise full control, many utility companies do have private sector clients as well, and there is often the intention to bring in private shareholders in the near future if they are not already present.

Furthermore, even where 'in house' activities are exempt from the public procurement rules, a competitive tendering procedure may still be advisable to avoid falling foul of the state aid rules. These apply in the case of any undertaking, which (though there is no official definition of 'undertaking') can be taken to mean any organisation involved in an economic activity. This may include public as well as private bodies, regardless of whether they make a profit. An economic activity means in essence anything offered on a market, which clearly includes a wide range of public services, from energy supply and public transport to care for elderly and disabled people.

Thus, public funding for services that involve economic activities is likely to constitute state aid and must therefore, as a general rule, be notified in advance to the Commission. There is a partial exemption in Art 106(2) of the Treaty, which states that, where undertakings are charged with providing 'services of general economic interest', the state aid rules apply only 'in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned'. This does not however remove the need for notification.

It is also worth mentioning that Protocol 26 TFEU explicitly refers to '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' as one of the shared values of the Union to be taken into account in this context.

The Commission has recently adopted a revised framework on services of general economic interest, which does exempt public funding for such services from notification under certain conditions. [24]

Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest, Official Journal C8, 11.01.2012, p. 4–14

Commission Decision of 20 December on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, Official Journal L7, 11.01.2012, p. 3–10

Communication from the Commission, European Union framework for State aid in the form of public service compensation (2011), Official Journal C8, 11.01.2012, p. 15–22

Commission Regulation on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest, Official Journal L 114 of 26.4.2012, p. 8

The rules are based in part on the case law of the Court of Justice, in particular the Altmark

judgment [25]. This sets out four conditions under which public funding for services of general economic interest is not to be regarded as state aid:

- the public service obligations are clearly defined
- the parameters used to calculate the compensation are established in an objective and transparent manner
- compensation for the public service merely covers costs and a reasonable profit
- the undertaking is chosen by a public procurement procedure, or the compensation is determined on the basis of an analysis of the costs of an average 'well-run' undertaking in the sector concerned.

To avoid room for doubt, the safest course of action may be to put public service obligations out to competitive tender where feasible. A procedure that allows for the selection of the tenderer capable of providing the service 'at the least cost to the community' (in practice, the open or restricted procedures) is sufficient to exclude state aid according to current case law.

As noted in section 2.2 above, the *de minimis* threshold below which aid does not to be notified (under certain transparency conditions) is at present higher for services of general economic interest (€500,000). Smaller contracts may thus be exempt from notification even if the Altmark conditions are not satisified, provided that the services in question are designated (by the member state) as services of general economic interest.

EU legislation on freedom of establishment and freedom to provide services may also affect the relationship between local authorities and certain public service providers. Of particular relevance is the Services Directive:

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

The key implication here for local authorities is that licences, authorisations, local regulations and administrative practices relating to services covered by the directive must be non-discriminatory (between providers from EU member states), necessary (justified by a genuine policy objective) and proportionate (not going beyond what is necessary to achieve the objective).

There are several exclusions from the scope of the directive (non-economic services of general interest, transport services, healthcare, certain social services and activities connected with the exercise of official authority, among others). But anything not explicitly excluded is covered, and there are several areas in a (non-exhaustive) list given by the European Commission (2007, p. 10) that might concern the activities of local authorities or PUCs. These include, for example, leisure services, construction services, services in the area of installation and maintenance of equipment and certification and testing services.

Taken together, the rules on procurement, state aids and freedom to provide services add up to the practical implication that many services hitherto regarded as an extension of local authorities' own activities are indeed likely to come under increased scrutiny, and it will be advisable in some cases to open these services up to competition, including (in theory at least) from other member states.

Indeed, it is common practice in Sweden and other member states to procure a variety of services that the municipality is obliged to provide, such as transport to and from schools, elderly care, home help and more. Unless the municipality provides such services as part of its own administration, or organises them as a service concession (on which there is a new proposed directive – see section 1.2), there is no real alternative to launching a tender procedure.

Each service will need to be assessed individually, also taking into account any sector-specific rules (e.g. in transport or electricity, where the rules are more lenient). Moreover, different aspects of the same service may be treated differently. In waste management, for example, the transport of waste to treatment plants is clearly an economic activity for which a market exists. This is less obvious in the case of a waste treatment plant, where more than one facility serving the same area might be uneconomic [26]. Without going into sector-specific details, the broad

24 For a useful and recent practical guide, see also 'Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest', COMMISSION STAFF WORKING DOCUMENT, SWD(2013) 53 final, Brussels, 15.2.2013

25 Case C-280/00, Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH (2003), ECR, p. I-7747.

outlines of a general checklist might include the following elements:

Are the services in question 'economic'?

If not (i.e. if there is no market and thus by definition no competitors to harm), the state aid rules do not apply (Art 2 of Protocol 26, TFEU). 'Non-economic' services of general interest may include the exercise of state prerogatives or fulfilment of state responsibilities in areas such as pollution control or the management of compulsory social security schemes with exclusively social objectives. Support for municipal-owned water companies may be unproblematic in countries (such as Sweden) where there are no private operators in the water sector. Non-economic activities of a purely social nature, such as 'childcare and public education financed as a general rule by the public purse and carrying out a public service task in the social, cultural and educational fields directed towards the population' may also be exempt (Commission SWD (2013) 53 final, cited above), even if there are also private operators in the field (as there often are in education).

Do all of the conditions for exemption of 'in house' services under the public procurement rules apply?

If not, the services in question (if their value exceeds the relevant thresholds) must be put out to competitive tender. (There are numerous examples of infringement proceedings against local authorities that have failed to award contracts competitively in areas such as water and waste management.) However, there will often be ways to ensure that the criteria are met (for example by splitting utilities up into one company that serves the municipality and fulfils public service obligations and another that serves private customers, and by avoiding private capital participation in the former).

If a competitive tender is not required, do all of the conditions for exemption of 'services of general economic interest' under the state aid rules apply?

If not, public funding for the services in question will have to be notified as state aid (which entails delays and the risk that aid will not be approved). As noted, the safest way to ensure that the conditions are met may be by means of a competitive tender. Otherwise, the amount of public funding provided in compensation for fulfilling public service obligations will have to be carefully justified. Sometimes it is not always obvious what the object of a tender should be. One example under discussion in several member states (including Sweden) concerns municipally owned housing companies that receive subsidies in return for letting accommodation at below-market rents, but not necessarily only to disadvantaged citizens. Since the housing companies own the property, it would be hard to envisage competitive tenders for the service of renting it out. Alternative non-discriminatory solutions may be called for in cases like this, for example by offering private landlords the same subsidy in return for letting similar properties at below-market rates.

Does the municipality license, authorise or regulate the services in question?

If these are covered by the services directive, procedures should be reviewed to ensure that they are non-discriminatory, necessary and proportionate. Licensing schemes that confer special or exclusive rights in areas such as leisure or construction services would have to be carefully justified (or withdrawn).

3.3. Comparison with Serbian legislation and practice

In the vast majority of cities and municipalities, municipalities exercise the ownership rights of the PUCs. Municipalities are the 'founders' of PUCs and in that capacity appoint the supervisory board and director(s) of the PUC. This means that PUCs are not in the same position as the municipal administration, and municipalities are not entitled to exercise the same control over PUCs as they do over their own administration. PUCs are legal entities, but municipalities as founders approve their annual business plan, plans for increases in

26 However, in Case T-222/04, Italian Republic v Commission of the European Communities, the Court upheld a Commission decision against Italy which found that tax exemptions for public utilities constituted state aid even though the companies were majority-owned by local authorities and provided local monopoly services.

salaries and tariffs, annual financial reports, etc. As such they have full authority concerning management decisions.

The main sources of finance for the operations of public utility companies are tariffs, contracts with the municipality/founder for core and non-core services, budget subsidies from various levels of government, grants and donations from domestic agencies, and funds raised from the market through borrowing or investments. The extent to which municipal budgets explicitly and implicitly subsidise their PUCs varies widely, with no relationship between the amount of subsidy and performance expectations.

In a sense, a PUC may also assume costs that otherwise belong to municipal budgets, for example by performing services without issuing an invoice. The legal and accounting designation of all forms by which funds may be moved between the budget and the PUC, as well as a convincing application of international and Serbian accounting standards at the PUC level, are critical steps in the process of improving transparency.

Public-private partnerships

There has been a recent upsurge of private investor interest in Serbian utility sector investments. Several private enterprises performing utility services have been founded in Serbian cities and municipalities in recent years (Leskovac, Jagodina, Kikinda, Novi Bečej, Smederevska Palanka, several municipalities of Eastern Serbia). For example at least four foreign-based private companies are now operating solid waste management in the country. With an improving investment climate, private sector participation in waste management, parking, green markets and other utility sectors could make significant inroads into the local economy in the near future.

Brantner Abfallwirtschaft, an Austrian waste management company has concluded long-term concession contracts with Novi Becej and Kovacica municipalities. Both concessions are for twenty years. As part of its capital contribution Brantner furnished its two local companies with vehicles and containers. Brantner also took over staff from the municipal PUCs engaged in waste management. In Kovacica municipality Brantner extended the service to all settlements in the municipality; also it is now using only one central disposal site, replacing the many local dumps previously in use.

Porr, Werner and Weber is a German-controlled joint venture. Instead of concessions, the Company formed joint ventures with two Cities, Jagodina and Leskovac. It has a majority stake in both companies. The company contributed new vehicles to the joint ventures; the municipalities contributed their existing vehicle fleets and the staff engaged in waste collection. The company has increased the coverage of the service to rural settlements. The collection rate is improving and is now about 70%. The Company has introduced selective collection of PET, paper, and aluminium cans and plans to invest in a composting facility. It is committed by contract in both projects to build landfills that are compliant with EU standards.

ASA, originally an Austrian waste management company, later taken over by Electricité de France, and later acquired by a Spanish investor group, has been a major strategic investor in waste management in Central and Eastern Europe since the early 1990s. It has recently launched two joint ventures, one with Kikinda and the other with a group of five Serbian municipalities in Central Serbia. ASA has an 80% shareholding in both joint ventures. ASA has also increased the coverage of service and is engaged in selective collection of recyclable waste streams. In the Kikinda joint venture, ASA has constructed a modern landfill, commissioned in July 2008 and compliant with EU standards. This is the first privately financed landfill in the country. ASA has a twofold contractual arrangement for generating revenues: it collects directly the fees from households, and in addition it charges a tipping fee to the municipality, at present about € 17 per tonne.

Trojon and Fischer EKO is a mixed Serbian/German company operating in five municipalities in Eastern Serbia. In each case it has a 25-year concession for handling waste. The company has brought in second-hand vehicles from Germany. It distributes containers to households and has introduced separate collection of PET, paper, and aluminium cans, which it sells to dealers in the local market. It has increased service coverage, supported by a public outreach programme aided by GIZ (a German government-owned enterprise that promotes international cooperation).

Metroparking LtD Belgrade. The municipality of Kikinda entered into a partnership with the

private company 'Parking System and Garage' Belgrade (in the meantime the company has changed its name to Metroparking LtD). The private partner is to invest € 1 million in parking places (open car parks and assembly garage car parks) and the operation equipment (for collection of parking tickets and its control) and will maintain parking facilities and equipment. Collected revenues from the parking services are shared between the municipality and the company. A total of 10 per cent of realised revenue goes to the municipality, while the remaining 90 per cent goes to the company for the term of 22 years.

3.4. Capacity to affect the outcome

3.4.1. Influence at the EU level or through the accession negotiations

As argued in chapters 1 and 2, there is no scope for general derogations or transitional arrangements in these areas. However, in assessing the implications of accession for the range of communal services, it may be worth considering whether any existing contracts etc. with PUCs should be notified as existing aid (see section 2.4.1).

3.4.2. Influence at the national/provincial level, including on transposition of legislation

Services of general economic interest are (barring 'manifest errors') up to each member state to designate. Thus national authorities can help by including the activities of all relevant PUCs in their list. This is important if PUCs are to benefit from the relevant exemptions (including the higher threshold for *de minimis* aid).

Where PUCs' assets are owned by the state, it may be possible (though no doubt easier said than done) to use EU accession in order to argue for a clarification of contractual relations with municipalities and the price paid by municipalities for the public services delivered.

SCTM might consider asking the Serbian government for clarification of the position of PUCs with respect to the EU *acquis* on public procurement. In particular, it seems unclear whether one of the criteria for exemption from the public procurement rules applies, namely whether the authority exercises control over the entity similar to that which it exercises over its own departments.

3.4.3. Preparations at local level including support from SCTM

SCTM could perform a valuable service to member authorities by undertaking an in-depth analysis of PUCs, taking into account the precise characteristics of different communal services and any relevant sector-specific rules, and thus reaching firmer case-by-case conclusions on the likely need for competitive tendering, notification, amendments to licensing rules, reintegration into the municipal administration, etc.

Such an analysis should be high on the list of priorities because some of the relevant rules (on state aids in particular) already apply, at least in principle. In addition, local authorities and PUCs may need time to prepare, whether for opening up services to potential competition, or perhaps in some cases for taking the necessary steps to avoid putting services out to tender. (It may, for example, be possible to clarify municipal control over PUCs, to decide against bringing in private capital, or even to reintegrate the services in question into the municipal administration itself.)

If policy-makers decide against competitive tendering in areas of 'economic' activity (most PUCs), they will need to prepare carefully (in cooperation with the national authorities, who are responsible for notification of aid to the EU Commission) in order to minimise state aid risks.

The proposed directive on concessions may also be worth monitoring given the prevalence of concession arrangements in waste management and other sectors (see section 3.3).

3.5. Indicators of potential outcome

As in the previous two chapters, the impact of accession on communal services will depend on the balance between increased competition and transparency on the one hand, and increased administrative costs and the risk of disruption on the other. The risk of substantial disruption can be mitigated by anticipating potential procurement and state aid issues rather than waiting for inevitable complaints and EU-level enforcement.

In general, EU accession should not prevent local authorities from subsidising communal services and organising these to suit the needs of local citizens. Indeed, if for whatever reason municipalities wish to avoid opening up services to competition, this will often be possible, though

it may mean restrictions for the PUCs concerned (in particular, they would not be able to bring in private capital or serve too many private sector customers).

In any event, EU accession is likely to require municipalities to make public policy goals more explicit and to pursue these goals more transparently than before. It would be difficult to argue that this is against the interests of local citizens, although it may well be a headache for local officials and incumbent PUCs. In some cases, local authorities may feel that their (legitimate) policy options are restricted.

On the other hand, developments in waste management and other utility sectors in Serbia may illustrate the benefits of a more open approach in attracting investment and expertise, including from operators based in other member states.

3.6. Other aspects of the organisation of public utility companies

The challenges that EU accession will pose for PUCs in Serbia raise broader questions regarding the possible reform of these entities. Issues include operational and fiscal independence, the capacity of municipalities to monitor performance and regulate tariffs, the scope for user charges to cover costs, or the extent to which communal services are likely to remain dependent on subsidies from the local budget.

This section presents a broad overview of how these issues have been resolved in Sweden, with the obvious caveat that Swedish municipalities enjoy relatively high own tax revenues as well as widespread acceptance among citizens of the need for user charges to finance services such as water distribution and waste management. This makes them much less dependent on central government than municipalities in many other countries, and so it may be easier said than done to replicate certain aspects of the Swedish model, at least within a short space of time.

Where municipal services are entrusted to a company that is not wholly owned by municipalities, the contract is generally awarded through public procurement. This is so even where there are very few economic operators likely to be able to fulfil the tender specifications, and even where the current supplier is partly owned by the municipality (as, for example, in the case of the Högdalen plant in southern Stockholm, which incinerates waste to produce combined heat and power).

Tender specifications may be extremely detailed, which means that municipalities exercise a high degree of control over exactly how the service is to be provided. Specifications will include detailed benchmarks for monitoring performance, but municipalities do not interfere unduly in day-to-day operations as long as the winning bidder abides by the terms of the contract.

Where a company is wholly owned by municipalities (as in the case of Stockholm Water, for example), public procurement may not be required by virtue of the in-house exemption outlined in section 3.2 above. But even in these cases, direction and management are still generally subject to the law on limited companies (*aktiebolag*). This means that municipalities, as owners, provide overall direction and appoint a board of directors, which in turn appoints the chief executive. Again, the owners will not tend to interfere in day-to-day management (although some might, just as some private shareholders in limited companies do).

As regards fiscal autonomy, the national law on local government sets one significant constraint. While municipalities may cover their costs (including for administration, publicity, etc. as well as operations) through user charges, they are not allowed to make a profit from user charges for any particular service. This of course does not stop private entrepreneurs who tender for municipal contracts from including a profit margin in their bids, as long as the municipality itself does not turn a profit. In some cases (such as electricity) there is also national price regulation.

On the other hand, there is nothing to stop municipalities subsidising communal services, even if subsidies go towards salaries or operational costs. Indeed, services for which there is no identifiable end user (such as cleaning of public spaces, winter maintenance or public street lighting) are generally financed through tax revenues. Where services with no clear end user are provided jointly with other more easily billable services (e.g. stormwater drainage as part of waste water treatment), the costs for the former are generally bundled into user charges. A municipality could decide to finance a service partly through user charges and partly through tax revenues, but few

if any do so at present. The general rule is that all costs are covered by user charges, and there is widespread understanding among citizens that local taxes would have to be higher in the absence of usage charges.

Another general rule for tariffs is equality for all inhabitants, regardless (for example) of geographical location within the municipality. A homeowner living next door to a waste depot pays the same price per kilo for waste collection as one who lives on the other side of town.

Beyond this, principles for setting tariffs vary somewhat depending on the service. For water and sewage there is a connection fee and a metered usage charge for each house or apartment building. For waste collection there is a fixed charge and a usage charge depending on the type of building – per kilo for houses, by volume and frequency of collection for apartment buildings.

The municipal administration draws up detailed tender specifications and tariff schedules on the basis of broad guidance from the municipal council. National legislation sets certain minimum standards in some areas, but municipalities have a large degree of flexibility to set higher standards, for example specifying targets for recycling or the use of district heating in preference to other types of energy. While local officials take care of most of the details, it is the municipal council, composed of local politicians, that takes the key decisions, which includes signing tender specifications.

Thus the process is political in essence, as indeed it should be, since water, waste and other communal services are important instruments of local policy with implications for taxes, the environment, local economic development and so forth. Strict application of the EU rules on public procurement helps to guard against corruption and nepotism. Of course, it is difficult to legislate entirely against tender specifications that favour one particular operator, although competitors are very likely to take any clear cases of discrimination to the courts (as noted in chapter 1).

4. Rural development

4.1. Overview of the impact of accession on local authorities

Local authorities (among others) have generally regarded the prospect of substantial amounts of EU funding as one of the most positive aspects of accession. Rural development funding, although far from the largest area, is of particular interest because of its explicitly local dimension.

There is potential for local authorities to use EU funds to finance some of the additional responsibilities that accession will bring. However, results have often failed to live up to expectations in previous enlargements. The experience of Swedish municipalities (among others) suggests that the aim should not be merely to attract funding, but rather to determine local policy priorities first and then see how EU funding opportunities match these priorities.

While EU rural development funding is strictly speaking part of the common agricultural policy, it falls under the rules that apply to all of the 'common strategic framework' funds, i.e. the regional, social, cohesion, rural development and fisheries funds. This chapter therefore presents a brief overview of the *acquis* relating to this common framework before turning to rural development.

Despite the clear regional and local dimension and the fact that the *acquis* takes the form of regulations rather than directives, national implementation is critical. EU funds remain very much a national concern, with member states determining how they are used and the extent to which local authorities and other partners participate in the process. Capacity to absorb EU funds, which may amount to several percentage points of GDP, varies greatly between member states. One factor behind this variation is the extent of local and regional involvement.

Influence at the national level is thus crucial to improving the outcome for municipalities. Preparations at local level, including administrative capacity-building and planning for co-financing, are also important. There is much to gain; the experience of other countries suggests that local authorities can make excellent use of regional and social funding, especially for infrastructure projects (e.g. roads, water treatment plants, school buildings and sports facilities).

Rural development funding also offers opportunities for rural municipalities, even if much of the support here goes directly to farmers. The experience of current member states shows great variation in national priorities, which again demonstrates that lobbying at the national level (including vis-à-vis agriculture ministries) is critical. Well-prepared municipalities should be in a position to argue that they can help to improve absorption of rural development funds, and also to improve consistency with the other EU funds.

Pending accession, it will be important for local authorities and SCTM to continue pressing their case for involvement in the preparation, implementation and monitoring of programmes and projects under the Instrument for Pre-accession Assistance (IPA). Since IPA is partly intended to prepare candidate countries for use of the above-mentioned funds, the increased emphasis placed on partnership (including with local authorities) and territorial development in the draft regulations for the 2014–20 programming period will be a useful argument to deploy.

4.2. Key aspects of the EU *acquis* and related issues for local government

4.2.1. Structural instruments in general

The key elements of the EU *acquis* in this area are the various Regulations on the operation and management of the funds themselves together with the Multiannual Financial Framework, which indicates the amount of money available over a

seven-year period. New versions for the next programming period (2014–20) are currently under discussion.

The general regulation sets out 'general provisions' for the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund, and 'common provisions' that also apply to the European Agricultural Fund for Rural Development (EAFRD) and European Maritime and Fisheries Fund [27]:

Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Council Regulation (EC) No 1083/2006, COM(2012) 496 final, Brussels, 11.9.2012.

This has now been discussed several times in Council and awaits a first plenary reading in Parliament (once agreement has been reached on the EU budget) [28]. Two significant developments for local authorities in the new proposals are worth highlighting.

First, the 'partnership approach' has been strengthened. Partnership means involving regional, local, urban and other public authorities, economic and social partners and civil society groups in the preparation, implementation, monitoring and evaluation of programmes. Among the potential improvements for municipalities:

- The Commission proposed a new national 'Partnership Contract' setting out priorities for the use of the funds, to be drawn up in cooperation with the partners. Previously, member states drew up priorities 'after consultation with relevant partners'. The Council has replaced 'Partnership Contract' with 'Partnership Agreement', which some regard as less binding, but the expectation remains that partners should be actively involved even at the preparatory stage.
- Art 5 of the new proposal says that 'The partners shall participate in the monitoring committees for programmes.'
- The Commission has drafted elements of a European Code of Conduct for Partnership, aimed at helping member states to follow best practice [29].

Secondly, there is increased emphasis on 'territorial development' in the new proposals, which represents a shift towards multi-level governance (including by cities and rural municipalities) and increased emphasis on local and regional conditions as opposed to sectoral priorities (e.g. energy, transport). For example:

- There is increased scope for local authorities to play a role in managing funds, in particular through 'integrated territorial investments' (Art 99) and 'joint action plans' (Art 93). These would, in effect, allow local authorities to receive funds to run mini-programmes of actions covering several priority themes. (There are no new or ring-fenced funds for this, however, which means that local authorities may be in competition with regional or national managing authorities.)
- The 'Leader' approach formerly employed only in rural development is now available for all funds under the heading 'Community-led local development' (CLLD). This entails drawing up a local development strategy and implementing projects through Local Action Groups (LAGs) made up of representatives of both public and private (including community and voluntary organisations, etc.) interests. It will be largely up to member states to decide whether and how CLLD is used under the regional and social funds [30]. There is an incentive to use CLLD in the form of a 10 percentage point increase in the maximum rate of co-financing from EU funds.

27 Note that 'structural funds' generally covers only the ERDF and ESF, while 'cohesion policy' relates to these plus the Cohesion Fund. The EAFRD is the second pillar of the Common Agricultural Policy, and the fisheries fund likewise relates to fisheries policy. In the new proposals the funds are referred to collectively as the Common Strategic Framework (CSF) funds.

28 See PRESS RELEASE, 3200th Council meeting, General Affairs, Brussels, 20 November 2012, 16397/12 for links to the partial general agreements reached so far.

29 'The partnership principle in the implementation of the Common Strategic Framework Funds – elements for a European Code of Conduct on Partnership' COMMISSION STAFF WORKING DOCUMENT, SWD(2012) 106 final, Brussels, 24.4.2012.

Generally speaking, local authorities may be involved as beneficiaries (i.e. the organisations that apply for projects, receive funding and account for its use, although not always the final users) or co-financers of projects for other local beneficiaries. They may also provide valuable support through promotion, advice to potential beneficiaries (e.g. civil society groups or private enterprises) and administrative support, and they may receive 'technical assistance' funding from the programmes for providing such support. As noted, they may also play a role in managing the funds as 'intermediate bodies' (see also the next section).

The obstacles for local authorities to overcome if they wish to make use of EU funding opportunities may be summarised under three headings:

- Strategic input at national/regional level. To ensure that the funds address local priorities, local government needs to make its voice heard both when it comes to defining national priorities and in the monitoring committees that oversee spending. As noted, there should in principle be greater scope for this in the next programming period.
- Administrative capacity. The preparation of high-quality projects and efficient implementation of programmes depends on strategic planning and skilled staff capable of ensuring compliance with complex EU and national rules, in particular as regards accounting and financial control.
- Availability of co-financing. In the case of regions with GDP per capita below 85 per cent of the EU average, the EU contribution may cover up to 85 per cent of total costs. But even if 'only' 15 per cent must be found from national sources (national public sources in some cases), the sums involved are more than enough to stretch national as well as local budgets, especially in the current economic climate [31]. In addition, full reimbursement is generally only made after completion of projects, which often means that beneficiaries have to provide temporary finance from their own budgets.

A further issue is that the national authorities sometimes make matters more complicated than the EU rules require. For example, the European Parliament's Committee on Regional Development cites 'over-complicated and over-strict national procedures, and frequent changes therein' as well as 'insufficient involvement of the regional and local level in the establishment of the operational programmes' among the factors causing absorption problems [32]. There are cases where different regional offices of the same national authority have arrived at different interpretations of the rules.

Poor absorption – i.e. failure to make effective use of available funds in a timely manner – has been a recurrent problem in both 'old' and 'new' member states (see Figure 4.6 below for the current period). There tends to be no shortage of good ideas for projects; the challenge lies rather in preparing and implementing projects correctly, at national as well as local levels.

In Sweden, a recent report by the National Audit Office (Riksrevisionen 2012) found significant scope for the national authorities to further simplify the administration of EU funds. For example, under the 'increased labour supply' priority of the ESF programme, co-financing often takes the form of 'in-kind' contributions of participants' own time. The system of accounting for this greatly increased the administrative burden, leading many participants to wonder whether it was worth seeking funding. For both the social and regional funds, managing authorities had made very little use of the options introduced by the EU to simplify accounting (e.g. standard rates for overhead costs, reimbursement on the basis of standard rather than actual costs in certain areas, and lump sum reimbursements for implementation of projects or parts thereof).

30 The draft regulations allow for local development under 'one or more' priorities of the programme, although the Commission has suggested a particular role for CLLD in meeting the objective of 'promoting social inclusion and reducing poverty'. See COMMISSION STAFF WORKING DOCUMENT, Elements for a Common Strategic Framework 2014 to 2020 the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund, Brussels, 14.3.2012 SWD(2012) 61 final, Part II.

31 A significant development from the February 2013 European Council conclusions in this regard is that VAT amounts may be eligible for a contribution from the funds where they are not recoverable under national VAT legislation. This is of particular relevance to public authorities that (unlike most private companies) cannot deduct VAT.

32 Committee on Regional Development, 'Report on absorption of Structural and Cohesion Funds: lessons learnt for the future cohesion policy of the EU', A7-0287/2011, 25 July 2011.

33 Instrument for Pre-accession Assistance (IPA), Multi-annual Indicative Planning Document (MIPD) 2011–2013, Republic of Serbia. Available from: http://ec.europa.eu/enlargement/instruments/overview/index_en.htm.

Besides accounting irregularities, failure to comply with other areas of the EU *acquis* is a common cause of problems with EU-funded projects. Incorrect application of the public procurement rules (see chapter 1) accounts for about 40 per cent of the errors found in Commission audits of ERDF and Cohesion Fund projects and about 75 per cent of the error rate for the Structural Funds estimated by the European Court of Auditors in its 2009 annual report (European Commission 2012). Nor does EU funding exempt projects that favour particular undertakings (public or private) from the rules on state aids (see chapter 2).

It is also worth checking that there are no obstacles in national legislation to co-financing of EU-funded projects. In Sweden, for example, the 1991 Local Government Act prohibits municipalities from acting outside their areas of competence. An additional act was required to make an exception to this rule for co-financing EU structural fund projects (moreover, the need for this was realised very late; the new act was adopted in 2009, after certain projects had been challenged in the courts).

The Instrument for Pre-accession Assistance serves partly to help candidate (and potential candidate) countries to prepare for effective use of EU funds. A new IPA II regulation is expected to apply from the start of 2014:

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the Instrument for Pre-accession Assistance (IPA II), COM(2011) 838 final, Brussels, 7.12.2011.

According to the Commission's proposal, assistance will address the following main policy areas (similar to the current priorities, though the order has changed):

- the transition process towards Union membership and capacity building
- regional development
- employment, social policies and human resources development
- agriculture and rural development
- regional and territorial cooperation.

Regarding items (b) to (d), the proposal states explicitly that 'assistance may include inter alia financing of the type of actions provided for' under the regulations on the ERDF, ESF, Cohesion Fund and EAFRD.

The IPA regulation does not place the same emphasis on partnership as in the above-mentioned general regulation. Nevertheless, Art 4 states:

> When preparing, implementing and monitoring assistance under this Regulation, the Commission shall in principle act in partnership with the beneficiary countries. The partnership shall involve, as appropriate, competent national, regional and local authorities, economic and social partners, civil society and non-state actors.

In the case of countries with well-developed systems of local government and competent representative associations, it would certainly appear appropriate for local partners to be involved in defining the (new) common strategic framework and strategy papers and in the joint monitoring committees. It remains to be seen whether the Commission will place greater emphasis on partnership in its implementing regulation for IPA II.

For Serbia, almost € 215 million of IPA funding is available for 2013, thus far split between the current components 1 and 2 (Transition Assistance and Institution Building, and Cross-border Co-operation). Opening of components 3, 4 and 5 (Regional Development, Human Resources Development, and Rural Development) – is pending subject to the adoption by Council and Parliament of an amendment to the IPA Regulation to reflect Serbia's candidate status. Other things equal, an increase in funding might be expected in the next programming period, to over € 30 per capita (as Croatia and Montenegro currently receive) from c. € 28 per capita at present. However, it remains to be seen how the cuts agreed by EU institutions in 2013 will affect the IPA budget.

Finally, it is worth stressing the explicit links between EU funding and the Europe 2020 strategy (outlined below in chapter 5). This applies to cohesion policy, rural development and IPA. For example, from the latest IPA Multi-annual Indicative Planning Document for Serbia [33]:

> The overall objective of EU financial assistance to Serbia is to support the country's reform efforts and its movement towards compliance with the EU *acquis*, so that it becomes capable of taking on the obligations of European Union membership.

The Europe 2020 agenda offers the enlargement countries an important inspiration for reforms. Serbia is invited to consider the priorities of the strategy and adapt its main challenges in the national context.

4.2.2. Rural development

The key element of the *acquis* here, besides the general regulation referred to in the previous subsection, is the proposed EAFRD regulation:

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), COM(2011) 627 final/2, Brussels, 19.10.2011.

Rural development is the second pillar of the Common Agricultural Policy, the first being market measures and direct payments to farmers. Like the structural and cohesion funds, the EAFRD involves member states in drawing up and co-financing multi-annual programmes in line with the Europe 2020 strategy.

The EAFRD comes under the same Common Strategic Framework and national Partnership Agreements as the other funds, as outlined above. The proposed regulation sets out the following priorities (replacing the four axes of the current period):

- fostering knowledge transfer and innovation in agriculture, forestry and rural areas
- enhancing competitiveness of all types of agriculture and enhancing farm viability
- promoting food chain organisation and risk management in agriculture
- restoring, preserving and enhancing ecosystems dependent on agriculture and forestry
- promoting resource efficiency and supporting the shift towards a low-carbon and climate-resilient economy in the agriculture, food and forestry sectors
- promoting social inclusion, poverty reduction and economic development in rural areas.

The proposal outlines nearly 30 types of measures that may be supported and indicates eligible costs and beneficiaries. Most measures are targeted at farmers (or groups thereof, or farmers' mutual funds), but there are several areas where municipalities are among the possible direct beneficiaries, including:

- Measures related to forestry, where municipalities and/or public enterprises are major owners in many countries. These include (for example) afforestation and creation of woodland, improvements to the resilience and environmental value of forest eco-systems, investments in new forestry technologies and forest conservation.
- Basic services and village renewal in rural areas. This may include (for example) development plans, small-scale infrastructure (including broadband), basic services for local residents, tourism infrastructure and maintenance of cultural heritage.
- Community-led local development (still designated as LEADER[34] in the draft EAFRD regulation), which involves establishing local action groups (LAGs) and designing and implementing a local development strategy. Municipalities cannot be the sole beneficiaries here, since neither the public sector nor any single interest group may represent more than 49 per cent of voting rights in a LAG. But they may well be instrumental in setting up and supporting LAGs and in co-financing activities. The EAFRD regulation specifies that at least 5 per cent of the total EAFRD contribution to the rural development programme shall be reserved for Leader.
- Advisory services and cooperation, including (for example) feasibility studies for the development of new businesses.

Local authorities may also be designated (by the member state or managing authority) as intermediate bodies for the management and implementation of rural development operations. Examples of this include local grant schemes available to farmers and other rural small businesses. This may be of benefit to those running local development projects, who may struggle to find the time and expertise needed for administration and auditing. On the other hand, those local authorities that choose to act as 'intermediate bodies' may also find these tasks demanding.

34 Originally a Community initiative, LEADER (from the French acronym Liaison Entre Actions de Développement de l'Economie Rurale) was integrated into the rural development fund in the previous period.

According to the February 2013 European Council conclusions, almost € 85 billion will be available for rural development during 2014–20, plus around € 4.8 billion in special allocations for certain member states [35]. A maximum co-financing rate of 75 per cent will apply for less-developed regions (plus an extra 10 percentage points for both euro and non-euro member states receiving macro-financial assistance).

A striking aspect of the current rural development programmes is the extent of variation between member states in how the funds are used. Lindberg et al. (2012), for example, find that the Nordic countries tend to focus on agri-environmental measures, whereas most other EU countries focus more on farm investments to support the competiveness of the agricultural sector. Many other member states, such as Germany, also place greater emphasis on 'wider rural development' under the current Axis 3. A comparison of the current national rural development programmes [36] also shows substantial variation in funding by axis.

In the next programming period (2014–20), the Common Strategic Framework and national Partnership Agreements are supposed to promote coordinated and integrated use of the different funds. According to the latest Council text for the general regulation (Annex 1):

> ... the Partnership Agreement shall indicate an integrated approach to territorial development. Member States shall ensure that the selection of thematic objectives and investment and Union priorities addresses development needs and territorial challenges in an integrated manner [and] shall seek to make maximum use of the possibilities to ensure coordinated and integrated delivery of the CSF funds.

The new proposals may therefore open the way for a broader role for municipalities in rural development programme, whereas in the current framework there has been a tendency for discussion of local development priorities to turn immediately to the LEADER axis.

35 In addition to € 325 billion for economic, social and territorial cohesion and a further € 8.9 billion for European territorial cooperation. Parliament's consent is still pending.

36 Available at http://ec.europa.eu/agriculture/rurdev/countries/index_en.htm.

In Sweden, local authorities' experience with LEADER projects has been mixed, with both good and bad examples. More generally, some municipalities have been reluctant to devote the large amounts of personnel time necessary to act as 'owners' of rural development projects that may have little in the way of sustainable impact once funding ends. In many cases, municipalities have acted as co-financers, for example in partnership with non-profit organisations and in areas such as development of broadband infrastructure. There is also much interest in energy projects, including biofuel, although again long-term profitability is a challenge.

If municipalities act as co-financers, this means that other local actors are the beneficiaries and will bear most of the administrative burden. The smaller the project, the more likely it is that administrators will lack the necessary competence and turn to the municipality for assistance, which it is not always possible to grant.

4.3. Comparison with Serbian legislation and practice

4.3.1. Agriculture and rural development – Serbia

Serbia is one of the most agricultural countries in Europe. Production here is mono-functional and traditional. According to official statistics, agriculture accounted for 18.2% of gross domestic product (GDP) in 2000. Only the processing industry had a greater share in GDP (21.7%). In 2010 the share of agriculture in GDP was only 8.5%; this makes it the business activity that experienced the largest fall over the decade (53%, or slightly under 7% per year). Statistically, agriculture alone employs the largest number of people, but income from agriculture amounts to only 3.9% of total income.

Agriculture is therefore still a very important economic sector for the national economy of Serbia. This view is confirmed by the data related to the share of this sector in GDP and total employment, and also exports in the period from 2005 (12.2%) to 2011 (10.4%) [37].

To enable comparison with EU statistical data, Serbian rural regions are, in line with the criteria of the Organisation for Economic Cooperation and Development (OECD), defined as the regions with population density of less than 150 people per

square kilometre[38]. According to this definition, 130 out of a total of 165 municipalities are deemed to be rural municipalities (3,904 settlements). This means that 85% of the territory of Serbia belongs to so-called rural regions, with almost 55% of total population. Besides significant human resources, rural regions host most natural resources of the country (agricultural land, forests, water) with rich ecosystems and biodiversity, as well as business activities and cultural and historical heritage.

Rural regions in Serbia are generally characterised by poverty, regional and development imbalances, migration, depopulation, unfavourable demographics, a shortage of local initiatives with a consequent loss of natural and cultural heritage, and the increasing vulnerability of the rural population. Rural infrastructure is underdeveloped and insufficiently functional. The age and educational structure of the rural workforce is less favourable than in the rest of the population. The unemployment rate among economically active people in rural population is higher than for their urban counterparts, while the employment rate in the primary agricultural sector is high compared with the tertiary sector. The uncompetitive position of the rural workforce, with regard to size and education, available skills and age structure makes it difficult to pursue a more innovative approach to rural development. The financial and business sectors are generally weaker in rural areas. Serbia has 452,606[39] registered agricultural households that typically cover a small area (4.5 ha on average) and exhibit low productivity and poor condition of physical capital (equipment, machinery, buildings, etc.).

Budgetary support for agriculture is insufficient. Since 2000 the amount in the agricultural budget, compared with the total budget of the Government, has ranged between 2% and 6%. The structure of the agricultural budget, compared with the structure applicable in EU, is unfavourable too. Allocations for rural development measures in Serbia are still very small. After the decreasing trend in 2004–2006 due to the growth of credit support and support to rural development, the share of market measures in the agricultural budget has grown continuously from 2006 (reaching 85.5% in 2011, with 12% for rural development measures).

The absence of a continuous and consistent rural development policy with clearly defined goals and mechanisms for their achievement has led to inefficiency and disappointing results. The pace of institutional change in the period after 2000 was slow. A significant step forward was made in 2005 when the Sector for the Development of Rural Area and Agriculture was created within the Ministry of Agriculture, Forestry, and Water Management (MAFWM). But it was dissolved in 2010 and its tasks were handed down to the level of the Department for Rural Development. Besides, uncertainty surrounding accession to the EU and the World Trade Organisation (WTO) adversely affected the pace at which required standards and procedures were adopted. A key legal tipping point in this period occurred in 2005 when the Government of the Republic of Serbia adopted the Strategy for Development of Agriculture (*Official Gazette of RS, No 78/2005*) and in 2009 when the Law on Agriculture and Rural Development was adopted (*Official Gazette of RS, No 41/09*). Today, MAFWM is actively working on harmonising the support to rural development with the requirements of the EU Instrument for Pre-Accession Assistance for Rural Development (IPARD).

4.3.2. Agriculture and rural development – the level of harmonisation with EU

Adjusting to the requirements of the EU Common Agricultural Policy (CAP) represents a key challenge for all countries in the process of EU accession. The agricultural policies of transition countries need to satisfy high legal and institutional requirements to be deemed compatible with the CAP. The situation seems even more complicated if continuous changes in the content and focus of the CAP, which take place in every programming period, are taken into account. What is important for Serbia in the harmonisation process, however, is that the system, namely the way in which measures are implemented, stays largely the same.

Although the regulations which define the way in which CAP is to be implemented do not have to be directly transposed into the legal system

37 Source: National priorities for international assistance (NAD) 2014–2017 with 2020 projections, Agriculture and Rural Development, Office for EU Integrations, Government of the Republic of Serbia.

38 The definition used in the draft IPARD programme: 'Rural municipalities are the municipalities in which production land (agricultural land, meadows, pastures and forests) account for at least 90 % of the territory'. This definition is not consistent with the definitions used in EU Member States.

39 Source: Ministry of Finance and Economy, Treasury Directorate, 31 December 2011, available at: http://www.trezor.gov.rs/rpg-statistika-lat.html

of the candidate country, they need to be fully implemented once the country becomes a full member. Candidate countries for EU membership are expected to create an operational structure for the implementation of rural development policy (RDP). The implementation of RDP is supported by the EU through the IPARD programme. The structure of the institutions that constitute the operational structure must be complementary to the structure implementing the RDP in EU member states. The operational structure for RDP implementation in candidate countries is defined by the IPA regulations [40]. Under these regulations, the payment agency needs to be accredited by the national certification body, and then by the European Commission as well. Because of the complexity of planning, programming and implementing CAP measures (the implementing institutional framework, financial procedures, information, control and monitoring), candidate countries are recommended to fully adjust their institutional and legal framework to meet the complicated requirements of CAP implementation.

In order to harmonise the support measures for agricultural and rural development with the CAP, and to adjust the (rather complicated) implementation mechanisms, Serbia is expected to implement a significant degree of legal and institutional harmonisation at national and local levels over the coming years.

The following is expected at national level:
1. Legal harmonisation – harmonisation of legislation, programme and sub-programme documents, and the definition of RDP implementation rules through the definition and development of:
- the Strategy for Agriculture and Rural Development 2014–2024
- the National Programme for Rural Development 2014–2020
- the IPARD Programme for Rural Development 2014–2020
- secondary legislation (regulations and rules that define in more detail the methods of implementation for different segments of agricultural and rural policy)
- a transparent data system in agriculture
- documents that provide instructions for the users of measures defined in agricultural and RDP (application forms, manuals, marketing material, etc.).

2. Institutional harmonisation – completing the establishment, accreditation, and consolidation of institutions by building the structure which will operationalise RDP by setting up:
- the Managing Authority
- the Payment Agency.

Besides these two aspects, it is also necessary to implement the reform of overall policy if a candidate country is to be deemed sufficiently harmonised to meet the CAP requirements. At this moment Serbia has a large number of measures that are not compatible with the CAP, and keeping them in place until the very moment of accession would send the wrong signals to users. This means that significant changes are expected in the agricultural sector and in rural development once the measures which are integral parts of CAP are adopted. That is why the candidate countries are recommended to implement harmonisation as a continuous but gradual process.

With regard to the scope of Chapter 11 of the EU *acquis* (Agriculture and Rural Development) and its significance for Serbian economy, it may be said that this chapter is one of the most demanding chapters for transposition into the domestic legislative framework within the negotiation process. In its latest progress report, the EU Commission (2012) concludes that alignment with the *acquis* in this chapter remains at an early stage.

4.3.3. The role of sub-national levels of government

Traditional ways of managing RDP have proved to be insufficiently efficient, which is why the OECD is increasingly promoting the concept of decentralisation in the management of rural areas. The main arguments include transparency, subsidiarity, competitiveness, heterogeneity, and cost savings (Bryden 2002; Bryden and Hart 2004). According to this view, the success of the local community depends more on local initiative than on 'top-down' directives. Thus, regions that function well do so in most cases thanks to their own efforts, motivation, and skills in both public

40 Instrument for Pre-Accession Assistance – Rural Development Council Regulation (EC) No 1085/2006, Article 28 (as far as the 2007–13 programming period is concerned).

and private spheres, which includes being efficient in pursuing the available regional, national, and EU support, and making good use of these resources in support of their ideas. Bryden and Hart stress that there are no observed cases where a central initiative or a large external investment has resulted in long-lasting success for the local economy, even when such initiatives seemed likely at the time to contribute to rescuing an underdeveloped region.

Serbia still has traditional hierarchical administrative structures in the management of rural development policy, with the subsidiarity principle being applied hardly ever or not at all, and with policies, even those exclusively related to local communities, being made at the central level.

Local authorities play a central role in identifying the developmental needs, priority goals, and programmes which will be promoted and financed within the incentive programmes and funds at the local level – this is generally a view taken by rural inhabitants (Milić 2011). It is stressed, however, that local governments only slowly and inadequately respond to the specific problems of their own communities. They often copy and paste whatever is already happening at national level without further analysing its effectiveness and feasibility in the local environment. Considering this, together with huge territorial imbalances in Serbia, it must be concluded that it is the local level of government that needs to provide a policy framework for resolving the issues of rural regions.

The Serbian legislative framework regulating the role of local authorities in this area consists of:

- the Agricultural Strategy of Serbia (*Official Gazette of RS, No 78/05*)
- the National Agricultural Programme of the Republic of Serbia 2010–2013 (*Official Gazette of RS, No 83/10*)
- the National Rural Development Programme 2011–2013 (*Official Gazette of RS, No 15/11*)
- the Law on Agriculture and Rural Development (*Official Gazette of RS, No 41/09*)
- the National Agricultural Programme 2010–2013 (*Official Gazette of RS, No 83/10*)
- the Law on Incentives in Agriculture and Rural Development (*Official Gazette of RS, No 10/13*)
- the Law on Agricultural Land (*Official Gazette of RS, No 62/2006*).

4.3.4. Survey findings

A survey conducted as part of the present project was structured around three key areas of local government's rural development 'capital', as classified by the World Bank[41]. These are: a) institutional capital, with a focus on the achieved level of institutional regulation, as well as on cooperation and networking with others so as to improve the governance of the territory; b) administrative capital, namely political activities, support, and adaptation of the legislative framework; and c) financial capital, analysing the local budget and its rural dimension.

In order to show how local authorities perceive the impact that capacity-development has on the total capital of a territory, impact indicators were developed to measure how local authorities influence the development of territorial capital. Eight components of territorial capital were taken into account, namely: physical resources and their management, culture and identity of the area, human resources, area-specific implicit and explicit know-how and skills, local institutions and good governance mechanisms, economy- and entrepreneurship-related activities, markets and exogenous relations, and the image of the area[42]. Local authorities were invited to provide their own assessments of this influence on a scale from 0 to 5 (0 – no influence, 1 – very low influence, 2 – there is an influence, but insignificant, 3 – there is an influence, but indirect, through other players, 4 – significant influence, 5 – direct and very strong influence), and to offer a qualitative dimension of their assessment, namely to explain it (through arguments, facts, examples, number of projects related to specific components, etc.).

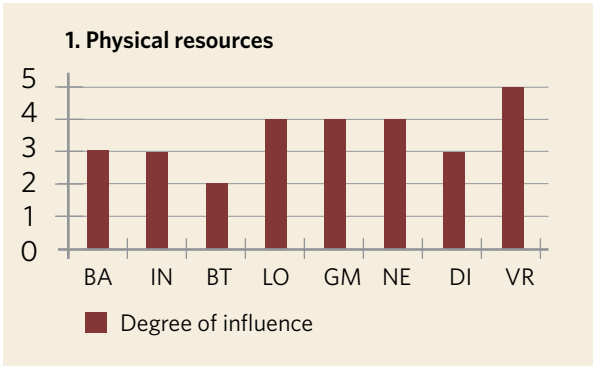
How local self-governments influence territorial capital

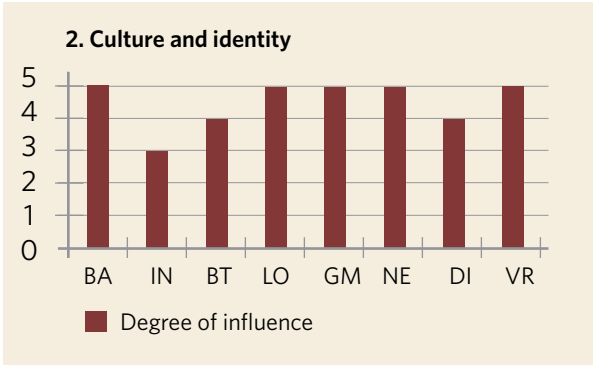
Local authorities should assume a leading role in defining developmental priorities for rural areas in their territories. This assertion is strongly confirmed by a part of the survey relating to local authorities' perception of how much the level of development of their institutional, administrative, and financial capacity influences the total capital of the territory in which they operate.

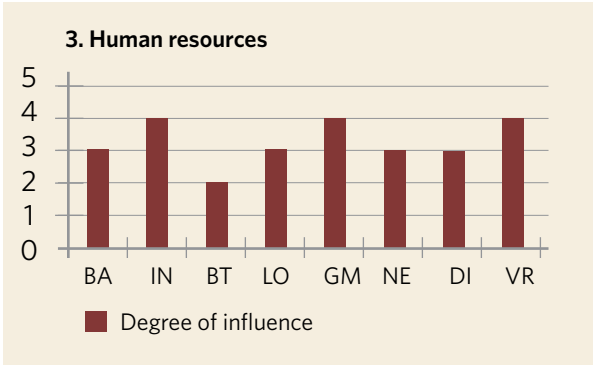
41 World Bank (Worldwide Governance Indicators, IFAD Rural Sector Performance Assessments, IFD).

42 LEADER European Observatory, Rural Innovation, 1999.

In their view, local authorities' influence is greatest when it comes to the improvement of image, culture, and identity of the territory (Figure 4.1). All survey responses underline that significant financial support is directed to supporting the projects that deal with these components of territorial capital, and this is particularly the case in multi-ethnic or multi-cultural areas. Similarly, local authorities recognise their influence on the status of physical capital and local institutions and good governance mechanisms. In their view they have least influence on the territorial capital components relating to the creation of new markets for territorial assets, and to the preservation, enhancement, and valuation of local know-how and skills. Only two local authorities have a more developed system for supporting these components, and both of these have city status. With regard to the capital which is outside the scope of their powers and responsibilities, local authorities believe that they have more capacity to get involved and exert an influence because they know the local situation better and are more familiar with potential for and barriers to development. Key obstacles to influence on all components of territorial capital lie in the limited scope of powers and responsibilities, and limited financial, technical, and human resources. Considering their limited budgets and human resources, local authorities are faced with very limited scope for action when it comes to improving territorial capital.







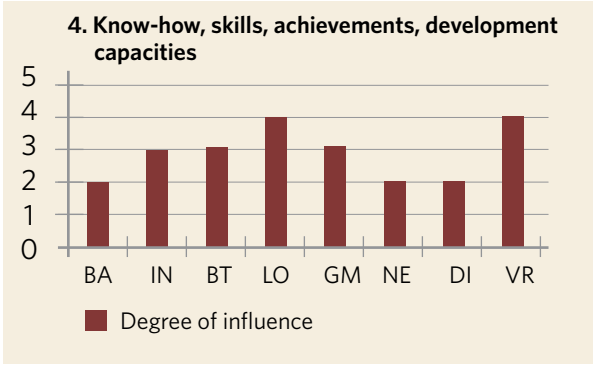
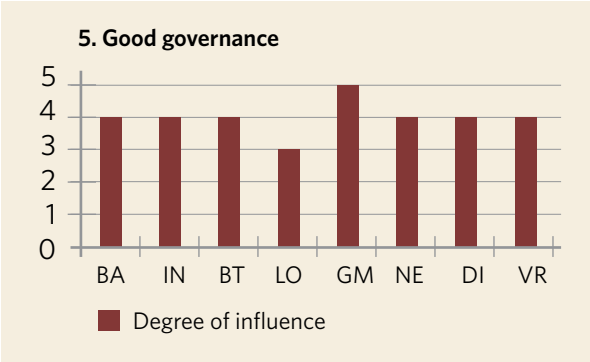
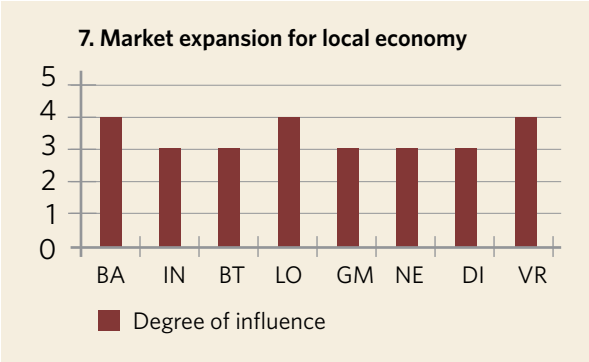
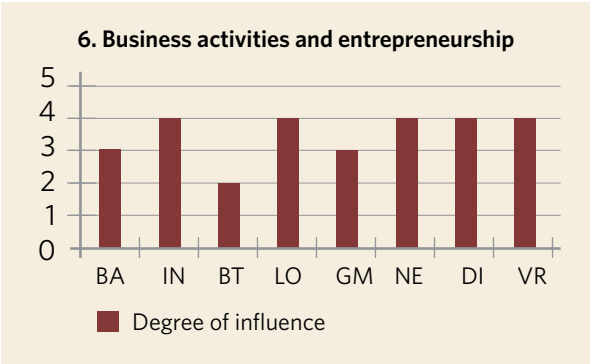
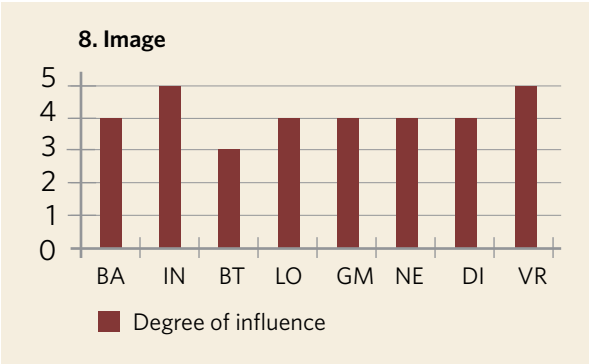


Figure 4.1: Impact of operational methods and local authorities' capacity on the components of territorial capital (see also next page).





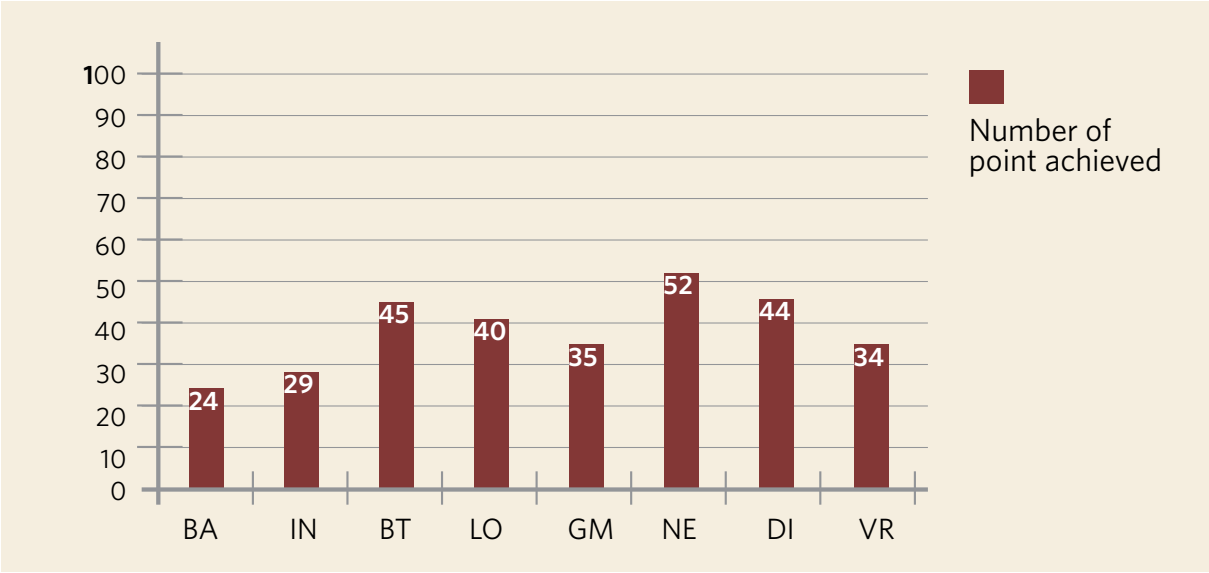




The capacity of local authorities to take on powers and responsibilities in rural development

The capacity of local authorities to take a leading role in RDP formulation and implementation is very limited (Figure 4.2).

Figure 4.2: The capacity of surveyed local authorities to take on powers and responsibilities in rural development

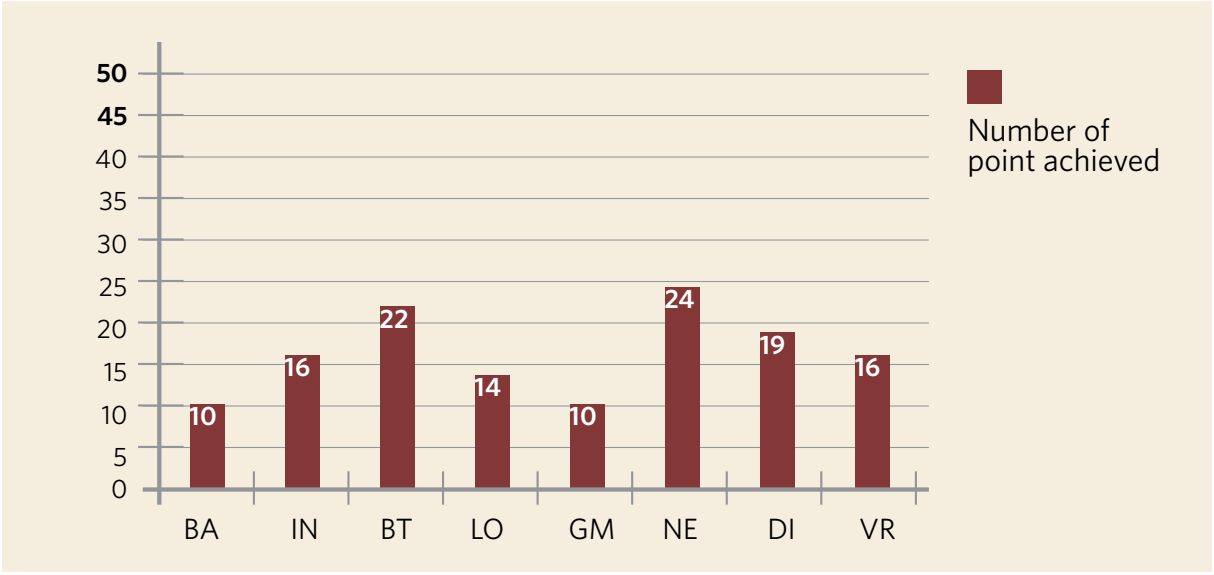


As regards the ***institutional dimension,*** the level of organisational regulation of surveyed local authorities in this area may still be considered quite low. None of those surveyed has made any visible progress with regard to the level of institutional regulation, their capacity for good governance in the area, or the availability of the services that they provide to the rural population (Figure 4.3).

Only two of the seven surveyed local authorities had a rural development unit whose name explicitly reflects the relevant powers and responsibilities[43]. The remaining five had their powers and responsibilities assigned to them through the existing departments that are specifically responsible for agriculture or, in most cases, through the offices for local economic development. The lack of human resources and a deficit of highly skilled staff who would be able to carry more responsibility in the implementation of larger developmental projects is a characteristic shared by all surveyed local authorities, regardless of their level of institutional regulation. The initiatives intended to encourage institutional changes with regard to rural issues are still very weak. Local authorities are quite consistent with regard to the availability and quality of services that they provide to rural population. Only one (Inđija) has fully available services and is constantly improving them by introducing new IT aids. The performance of Bačka Topola in this area is also advanced. Services in the remaining local authorities are only partly available within rural communities.

As regards the ***administrative dimension***, it is notable across the entire spectrum of policies and institutions that directly or indirectly influence rural areas that the focus tends not to be on the specific needs of rural areas. Rather, the same criteria are applied for both rural and urban parts of the local territory. Also noticeable is the extreme complexity, rigidity, and fragmentation of local policies of relevance to rural development in all local authorities surveyed. Accordingly, strategic plans only sporadically address rural policy as a specific and consistent aspect of development. Only two of the surveyed local authorities have drawn up a programme document which directly regulates rural development support mechanisms. The other five also say that rural issues are an important part of the strategies related to local economic development. However, the term 'rural development' is hardly ever used in strategic plans. This is most often explained by the complexity of the topic and the lack of capacity to institutionalise issues related to rural development. Further arguments relate to the insufficiently clear position with regard to the duties, authorisations, and limitations of local authorities and institutions, which even local representatives

Figure 4.3: Institutional capacity of surveyed local authorities to take on powers and responsibilities in rural development



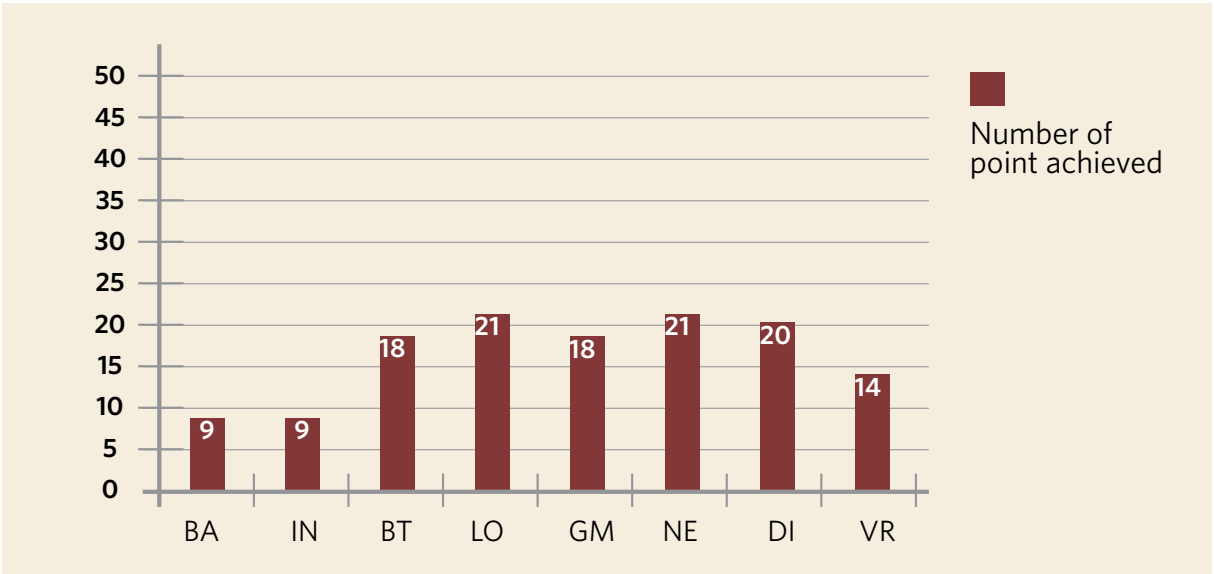
43 Office for Local Economic and Rural Development, Agency for Rural Development.

find confusing. This complexity, as the surveys showed, makes it difficult for local authorities to select the right measures and ways to promote the specific interests of local rural communities. Another noticeable problem concerns the understanding of the level and type of local government autonomy in this regard. The autonomy to which we refer here is financial (budgetary, fiscal) autonomy, and autonomy of authorisations, such as local authorities and agencies being able to choose the best way to achieve results regardless of the developmental policy concerned and thus to better adjust them to other policies at local level. It is underlined that the autonomy of local authorities in this regard was particularly threatened by the passage of the Law on Incentives in Agriculture and Rural Development, and its Article 13[44]. All those surveyed mention that the bureaucratic burden, namely the fact that the employees in local administrations have to simultaneously perform many tasks that fall into more than one domain, often causes so-called *administration fatigue*. A further aggravating circumstance, with regard to the administrative capacity of surveyed local authorities, is that decision-making circles and political boundaries are strictly fenced off by the administrative borders of the municipality, village area, etc., which obstructs cooperation with neighbouring municipalities or regions.

The depth of the strategic-regulatory framework is very limited. Only two local authorities have developed a multiannual rural development programme, and only one of these programmes is a fully integrated document that covers all the segments of rural development. Figure 4.4 below shows the results of the analysis of the level and quality of the rural dimension in the local strategic-regulatory framework, and the thoroughness with which local authorities defined their development-related strategic-regulatory framework.

As regards the ***financial dimension***, it is difficult to provide any objective picture of results because of the unclear and inefficient state of fiscal decentralisation and the lack of predictability of local government financing. For this reason, the survey focused on two particular aspects of local budgets: whether separate allocations for rural development are specified, and how predictable and stable allocations for rural development are. The scores shown in Figure 4.5 reflect the fact that none of the local budgets analysed present the allocations for rural areas as a separate item.

Figure 4.4: Administrative capacity of surveyed local authorities to take on powers and responsibilities in rural development



44 Official Gazette of RS, No 10/13.

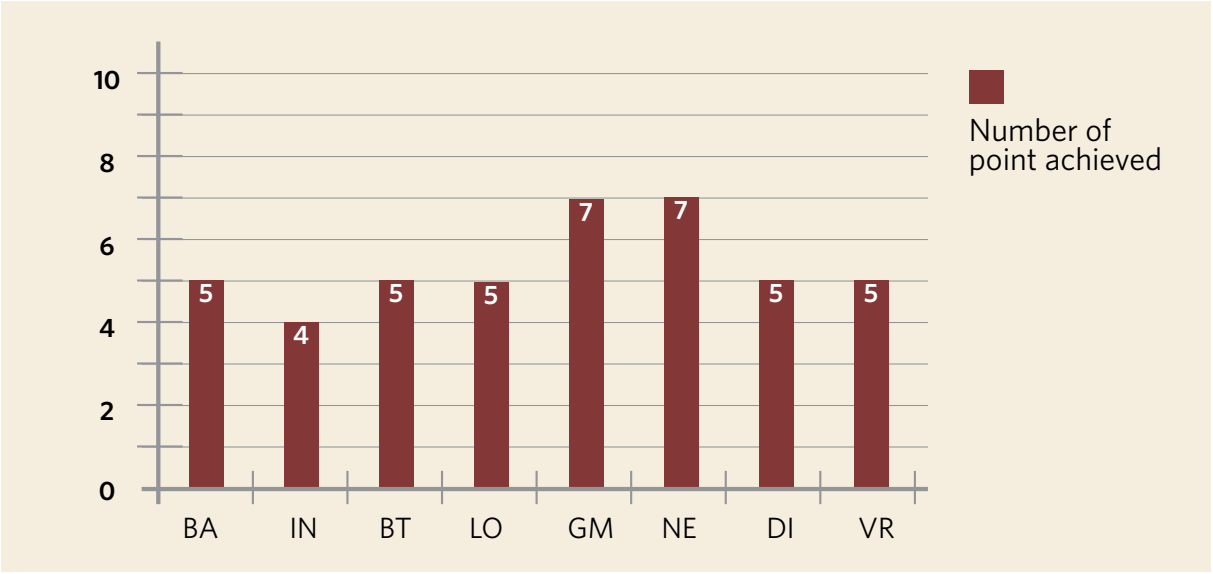


Figure 4.5: Financial capacity of surveyed local authorities to take on powers and responsibilities in rural development

Most local authorities consider allocations for rural areas as part of those for agriculture, other business activities, utility infrastructure, social welfare and similar. Local authorities clearly understand the multidimensional nature of rural allocations, but fail to distinguish the share of the total budget that is invested in rural areas. Moreover, with regard to the stability of rural allocations, it is encouraging that none of the surveyed local authorities showed a negative trend. All believe, primarily because of the importance for local development, that allocations for rural areas will increase in the coming period. (On the other hand, only two of those surveyed provided an extrapolated comparison between two budget years, 2012 and 2013, as the evidence for their statements.) Nevertheless, local allocations for rural development still appear to be very low and uncorrelated with the ranking of this topic among local authorities' strategic goals. The estimated share of the budget for rural allocations ranges from ≤1% in two local authorities, through 3–4% in another two and 10% in another, to more than 16% in one case (the remaining two local authorities did not provide the necessary information).

4.3.5. Conclusions

The main conclusions from the survey may be summarised as follows:

1. Lack of knowledge about the requirements of the EU integration process. None of the surveyed local authorities has enough capacity to fully assume the powers and responsibilities for RDP management, but all have clearly articulated the need to strengthen the relevant capacity. Local authorities are to a certain extent aware of their role in the process of RDP formulation and implementation.
2. Insufficient level of organisational regulation, lacking human and technical capacity. Complexity of the issues of duties, authorisations, and limitations of national and local institutions are key obstacles to the improvement of the institutional dimension of local government capacity.
3. Unrealistic perceptions by local authorities of their own strategies and potential.
4. Local government capacity is higher in those local authorities with experience of cooperation with donor organisations.
5. Greater progress in surveyed local authorities is noted when it comes to administrative capacity for RDP management. The complexity, rigidity, and fragmentation of local and national policies related to rural development are the main barriers to further improvements in this dimension.
6. The status of a given local authority (whether

municipality or city) does not necessarily correlate with the level of institutional and administrative capacity for RDP management.
7. The regional dimension does not necessarily correlate with the level of institutional and administrative capacity for RDP management.
8. Regional imbalances with regard to the availability of services that local authorities provide to rural communities. At least among the surveyed local authorities, rural communities that belong to the regions of Vojvodina, Belgrade, and Šumadija and Western Serbia, are less isolated than rural communities in Southern and Eastern Serbia.
9. Distrust among key actors in the field of rural development.
10. Lack of initiative, innovation and creativity.
11. Lack of a rural dimension in local budgets. Local budgets for rural development are modest. The scope and amount of rural allocations from local budgets do not necessarily correlate with the level of institutional and administrative capacity for RDP management.
12. Local authorities do not monitor the effects of their own policy.

4.4. Capacity to affect the outcome

4.4.1. Influence at the EU level or through the accession negotiations

Serbia's treaty of accession will contain adjustments to the financial framework and to the current regulations for structural instruments for cohesion and rural development. For the regulations currently in force, these adjustments may include, for example, relaxed deadlines for evaluation reports or use of committed funds.

In addition, transitional arrangements on the rules for the use of EU funds are possible. In Croatia's accession treaty (Annex VI, p. 235 ff.), for example, there are several provisions on rural development that will apply for part of the 2014–20 programming period. It seems clear from the result here that the priority for Croatian negotiators was to enable certain forms of support to farmers to continue, even at the expense of wider local development measures. For instance, the 5 per cent of EAFRD resources ring-fenced for Leader actions is halved (which may reflect absorption problems, but nevertheless this is something that rural municipalities could help with).

The European Commission plays an important role in supervising the implementation of IPA, both through its delegations in beneficiary countries and through relevant Directorates-General in Brussels (Enlargement, Regional, Employment, Agriculture). While management of programmes should be fully decentralised after access, the Commission will still play a key role, negotiating Partnership Agreements with member states and participating in monitoring committees (albeit in an advisory capacity).

This means that the Commission is a potential ally vis-à-vis the national authorities. Provided that local authority associations are represented in some form in the partnership, they may be able to make contact directly with Commission officials in order to press their case in areas where the national authorities are not paying due regard to local concerns.

4.4.2. Influence at the national/provincial level, including on transposition of legislation

Since the EU *acquis* in this area takes the form of Regulations, transposition as such is not required. However, national arrangements for the implementation of EU funding are still crucial to the outcome for local authorities. It will be important for local authorities (along with other beneficiaries) to try and persuade the government to:

- involve partners at an early stage in defining strategic priorities and in programming, which should help to increase absorption capacity by improving the quality of projects in the pipeline
- ensure coordination between the several different line ministries involved, avoiding different procedures for different instruments, in line with the integrated approach proposed by the EU institutions
- establish a consistent framework of national procedures for project selection, financial control, monitoring and so forth, avoiding unnecessarily complicated or frequently changing rules
- ensure that managing authorities do not make procedures more complex than necessary, for example by imposing extra requirements for national co-financing or by failing to make use of the scope for simplification in the EU rules
- set aside sufficient financial and human resources in the national budget for co-financing

and high-quality administration of programming, project approval, auditing and so forth
- see that sufficient resources are available at the local level for strategic planning, project preparation, co-financing, implementation, financial control and evaluation, thus reducing the risk of irregularities and/or forgoing high-quality projects.

Despite the increased emphasis on partnership, it remains up to member states to decide exactly which partners are invited to the table, and the EU is unlikely to interfere unduly in sub-national arrangements as long as some local, urban, rural or regional representatives are present. Local authorities in Serbia should be in a relatively strong position given their size and competences and the absence of well-established regional partners. But it will be important to keep making the case and to strive for involvement in IPA II.

As noted in the next chapter, local authority associations may represent their members not only as municipalities but also as public employers. Since social partners (employers and unions) must also be represented in the partnership, this may offer an alternative way in. (In Sweden, for example, SALAR sits on the European Social Fund monitoring committee in its capacity as an employer.)

Both the current and the new frameworks for cohesion policy and rural development leave member states a great deal of flexibility to set priorities and determine the types of projects that will receive funding. One piece of advice from local authority associations in Sweden and elsewhere is to look at municipal activities (or desired activities) and consider which of these could be framed in terms of the Europe 2020 strategy and cohesion and rural development priorities, and then to lobby the national authorities to ensure that these activities and priorities are reflected in the strategic and programming documents.

For example, many municipalities are interested in making use of EU funding for renewable energy and energy efficiency projects (including district heating – cf. chapter 6). Regenergy (2007) demonstrates how sustainable energy projects could be covered under cohesion policy priorities and instruments for the current period. However, 'the extent of the support depends on the Member States. Through their networks, local actors should make practical proposals [to] national governments to ensure most of their energy concerns will be eligible'.

It is also worth noting that regional-level governance can prove problematic for local authorities in the context of EU funding, for two reasons. First, the presence of regional partners may leave less room for local authorities in the national partnership. Secondly, administrative hiccups and absorption problems may result where relatively new and inexperienced regional development agencies or self-governing regional administrations are assigned responsibility for managing programmes, as happened in Slovakia (Knezevic 2010). In Serbia, where local authorities are among the founders of regional development agencies, but the role of these agencies varies somewhat between regions, the second risk would appear to be more relevant.

Clarification of the somewhat blurred role of local government in the forestry sector in Serbia may be helpful in creating incentives for municipalities to promote or participate in rural development projects in this field.

4.4.3. Preparations at local level including support from SCTM

Local authorities with coherent development strategies and a shortlist of investment needs that are in principle eligible for EU funding will clearly have a head start when it comes to making effective use of EU funds. As noted above and below, the Europe 2020 strategy provides an excellent point of departure for framing such a strategy. It may be easier said than done in the current economic climate, but setting aside an adequate budget both for improving administrative capacity and for co-financing local projects will be an important determinant of the impact of accession in this area. Alliances with other partners – private enterprise, agricultural associations, non-governmental organisations, universities, employers, unions and others – may also help when it comes to securing co-financing.

From the overview given in section 4.3, greater consideration in local development strategies of the specific needs of rural communities, as well as great efforts to inform the rural population of the support and services that are available, is also to be recommended.

There is no doubt that the administration of EU-funded projects is challenging, particularly for the inexperienced, and that attracting and retain-

ing appropriately skilled staff is difficult. However, it is probably less difficult for local authorities than it is for the majority of other local actors. In addition, strategic priorities for the use of funds can make a big difference to the administrative burden. In Sweden, for example, there were many more problems with ESF projects in the previous period (2000–06) on account of a large number of small projects. Audits often revealed basic problems (such as invalid receipts) that would have been easy for experienced administrators to avoid. There have been fewer problems in the current period thanks to larger 'umbrella' projects that are still aimed at large numbers of beneficiaries but run by organisations that can cope with the administration.

For rural municipalities, the rural development component of IPA II and the EAFRD post-accession may represent additional sources of funds for local development (in the order of 20 per cent of total 'CSF' funding). While much of this will continue to go direct to farmers, the 2014–20 framework offers increased scope for municipalities to be involved, including in wider local development projects such as the rolling-out of broadband infrastructure, diversification into bio-energy or promotion of tourism. A good argument to deploy even vis-à-vis the agriculture ministry is that municipal involvement is likely to strengthen absorption capacity in this area, where projects tend to be small and administratively challenging for beneficiaries.

Nevertheless, a greater role for municipalities may not always be the answer. In bio-energy, for example, municipalities may play a role in influencing legislation and as energy purchasers, but profitability in the longer run is likely to depend on the sustained involvement of competent private entrepreneurs.

4.5. Indicators of potential outcome

According to the latest Eurostat figures, Serbia's GDP per capita (in PPS) in 2011 was 35 per cent of the EU-27 average. This means that even the richest region, Belgrade, would comfortably qualify for the highest level of regional support (GDP per capita below 75 per cent of the EU average), and seems likely to continue to do so for some years.

Table 4.1: Regional GDP 2011, preliminary results

	GDP (million RSD)	Share	GDP per capita (RSD)	Level index (RS=100)	GDP per capita as share of EU average (EU-27=100)
REPUBLIC OF SERBIA	3 204 363	100	441 000	100	35
Belgrade region	1 270 003	39.6	771 000	174.6	61.1
Vojvodina region	858 667	26.8	441 000	100	35
Sumadija and West Serbia region	609 333	19	301 000	68.2	23.9
South and East Serbia region	466 359	14.6	284 000	64.4	22.5
Kosovo and Metohija region	...	...	...	...	...

Source: Statistical Office of the Republic of Serbia, Eurostat

The cap of 2.35% of GDP on total cohesion transfers (European Council conclusions, February 2013) can thus be expected to be binding. Allocations between member state of rural development funding are still unclear, but taking the average of c. 20 per cent of total CSF funds suggests an additional 0.6 per cent of GDP.

Prior to accession, Serbia will continue to benefit from IPA funding, with almost €215 million available in 2013, or around 0.75 per cent of GDP[45]. For an indication of the breakdown between components, the financial frameworks for Montenegro in 2013 and Croatia in 2012 (2013 is misleading on account of accession) suggest around:

45 Using a figure of €28 billion for 2010 (source: Statistical Office of the Republic of Serbia). The actual percentage will be lower given a c. 9 per cent fall in the value of the euro against the dinar between 2010 and 2012, which more than offsets the reported contraction in Serbian GDP over the same period.

Table 4.2: Breakdown between IPA components, Montenegro 2013 and Croatia 2012

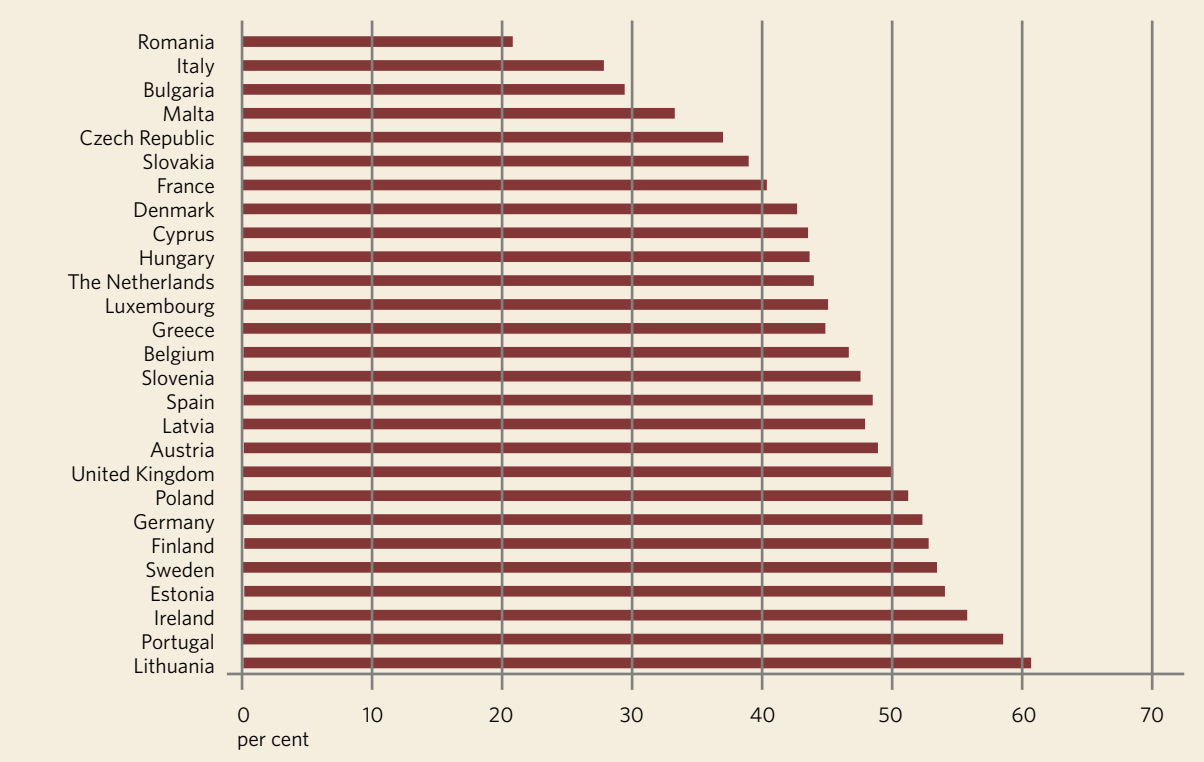
COMPONENT	Per cent
Transition Assistance and Institution Building	15–26
Cross-border Co-operation	11–12
Regional Development	37–43
Human Resources Development	8–10
Rural Development	17–21

Source: European Commission, DG Enlargement

As a rough indicator, therefore, accession may be expected to almost quadruple the amount of EU funding available to around 2.95 per cent of GDP. Co-financing of approximately 15 per cent of this amount (ca. € 124 million) would have to be found from national sources (most of it from public sources judging by other countries' experience).

Since the cap on cohesion funding is lower than those currently applied to the least prosperous member states, absorption may be less of a challenge. However, effective and efficient use of the funds is not something that can be taken for granted. The chart below provides one indicator of the wide variation in absorption capacity at the national level. These figures are for the 2007–13 period, which is far from over (payments may be made some years after funds are committed). Nevertheless, countries with low absorption in the early years of the programmes are likely to be in a hurry, which may increase the likelihood of errors or sub-optimal use of funds. In this case, € 1 of EU funding may be worth less than € 1 of national or local funding.

Figure 4.6: Structural and cohesion funds allocated per member state paid by the Commission at 8 November 2012



Note: Combined figures for the ERDF, ESF and Cohesion Fund
Source: European Commission

The question then is how much of the funding might be accessible to local authorities for the benefit of their citizens. This will depend on many factors, not least the administrative structure of regional and local government and local authorities' success lobbying for their priorities.

Churski (2008) provides some encouraging figures from Poland's first two years of EU membership. Local authorities (communes and districts) were major beneficiaries of the structural funds, concluding 2,323 contracts with a total value of € 1,989 million (71.1% structural funds, 28.9% co-financing), or 43 per cent of the funds for the period analysed (1/5/2004 to 31/7/2005). The great majority of projects (86 per cent) concerned 'hard' infrastructure rather than 'soft' projects aimed at developing human resources, which tend to be on a smaller scale and more complex to implement. On the whole, municipalities in poorer, agricultural regions received less funding than those in richer, metropolitan regions.

The distribution of rural development funding (much of which goes direct to farmers) will not be as favourable for municipalities. But the tendency in newly acceded countries for EU funding to benefit richer regions may provide municipalities with a useful strategic argument for increased involvement in wider local development projects, making good use of rural development funding, but also helping to channel other funds into parts of the country that are in most need of assistance.

On the cost side, the staff time needed to prepare, implement and monitor programmes is clearly significant, though difficult to estimate at the local level. Horvat and Maier (2004) provide figures on staff numbers at the national level in five countries from the 2004 wave of enlargement (an average of just over two persons per million euros of funding). Administrative staff costs for beneficiaries (including local authorities) might well be higher, especially in the case of smaller projects. However, any additional recruitment and training that increases local authorities' chances of securing EU funding seems likely to pay for itself, given the amounts involved. There may also be side benefits for public management more generally, for example in strategic programming.

In Slovakia, according to Knezevic (2010), the key to success was 'timely recruitment and adequate salaries of staff engaged in administrative structures assigned for EU funds management'. The same applies at the local level, since the skills required to prepare and implement projects will no doubt be in demand from the private as well as the public sector.

The analysis presented in section 4.3 also suggests that the lack of a strategic focus on the needs of rural communities and the shortage of concrete initiatives from rural municipalities in Serbia may represent an obstacle when it comes to making effective use of rural development funds in support of local economic development.

5. Employment and social policy

5.1. Overview of the impact of accession on local authorities

This chapter covers, in the first place, aspects of the EU *acquis* that affect local authorities in their capacity as employers, including minimum standards in the areas of labour law, equality, health and safety at work and anti-discrimination, and participation in the EU-level 'social dialogue'. Secondly, it looks at aspects of the social policy *acquis* that are relevant to local authorities in their broader role as policy-makers and service providers. Most EU action in this field comes under umbrella of non-binding policy coordination.

Local authorities are subject to the (transposed) provisions of EU labour law and legislation on health and safety, non-discrimination and so forth in the same way as most other large public or private employers are. To the extent that the rules are less flexible than they would have been in the absence of EU accession, this may mean practical constraints and increased costs in some areas, for example through weekly limits on working time or equal treatment requirements for part-time or fixed-term employees. Of course, there may be benefits as well, for example in terms of productivity, employee satisfaction or fewer accidents at work.

A significant channel of influence for local authority associations in some member states is the EU-level social dialogue. The social partners (i.e. trade unions and employers' associations) are formally consulted on all legislative proposals in the social and employment field. They also negotiate agreements between themselves, which may be implemented within the national social dialogue in each country or, as has happened in several cases, forwarded to the Commission to form the basis of new EU legislation. Local authority associations take part in this process not as representatives of local government, but as major public sector employers.

Policy coordination involves EU-wide guidelines, targets and country-specific recommendations, which member states translate into national action plans. They then monitor progress together with the Commission in a peer review process. The national authorities are the key players here, but there is growing recognition of the role played by sub-national authorities, not least in implementing policies to promote employment and social inclusion. Involvement here may help local authorities to get their foot in the door at the national level on EU issues more generally. It is also likely to be helpful when it comes to drafting funding projects, since one element of the Europe 2020 strategy is increased linkage between identified priorities and financial instruments. Some funding is already available for local authorities in candidate countries.

The impact of accession in this field will depend partly on local authorities' broader outlook on EU membership. Some may choose to focus on the costs of implementing EU standards on workers' rights and non-discrimination, although these are not expected to be substantial (except perhaps where local authorities are responsible for health services). Others may see opportunities to promote 'European' standards, to use EU policy coordination as a framework for local development, to exert influence at the national level and to seek related opportunities for funding and networking with counterparts in other member states. In addition, the move towards accession may represent a valuable opportunity for SCTM to gain recognition as an employer's representative within the social dialogue at both EU and national level.

5.2. Key aspects of the EU *acquis* and related issues for local government

5.2.1. Local authorities as employers

The *acquis* in this field includes, first of all, minimum standards relating to employees' rights and

the organisation of working time. Perhaps the most significant measure to date for local authorities in most EU countries has been the Working Time Directive:

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.

This sets a limit on weekly working time (48 hours on average, including overtime) and requires minimum rest periods and paid annual leave, with special rules for night workers and certain sectors. There are also several separate directives containing specific provisions for road transport, aviation, rail and shipping.

The limit on working time is of particular relevance to the health sector (especially given rulings from the European Court of Justice to the effect that on-call time for doctors and others counts as working time). The directive includes an opt-out provision by which member states may allow individual workers to waive the 48-hour weekly limit. According to the Commission's (2010) latest implementation report, 16 member states have made use of this (5 in all sectors and 11 only in sectors involving heavy on-call work, especially public health).

Besides healthcare, other areas of local authority activity, such as fire-fighting, elderly care and indeed any activity that involves on-call duty, may be affected. Even if individual employees are allowed to opt out of the weekly limit on working time, they may choose not to do so. In any case, the other provisions of the directive still apply, with potential implications for shift patterns, for example. Local authorities (e.g. environmental health departments) may also have a role in enforcing provisions.

There are ongoing efforts to revise the directive that would most likely restrict the scope for opt-outs and perhaps also exclude on-call time from the definition of working time for some workers. A Commission proposal from 2004 was shelved in 2009 after the European Parliament and the Council failed to reach agreement. The Commission then embarked upon a consultation of the social partners (employers' organisations and trade unions) at EU level in 2010 with a view to reaching broad agreement on revisions, but without success. The ball is now effectively back in the Commission's court, although new legislative proposals are not expected in the present term (which ends on 31 October 2013).

Other directives relating to work organisation lay down (for example) requirements to consult employees in the event of collective redundancies or to inform employees of applicable working conditions. There is also a general framework for informing and consulting employees:

Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community – Joint declaration of the European Parliament, the Council and the Commission on employee representation.

This can be seen as attempt by the EU to promote social dialogue at the national or local level, although it does not address critical aspects such as wage bargaining [46]. Local government units and other undertakings or establishments (with the possible exception of very small ones) are obliged to consult and inform employees on:

- the recent and probable development of the unit's activities and the economic situation
- the situation, structure and probable development of employment and any anticipatory measures envisaged, in particular where there is a threat to employment
- decisions likely to lead to substantial changes in work organisation or in contractual relations.

In addition, several directives on subjects ranging from parental leave to telework have been issued as a result of the EU-level social dialogue between employers and trade unions. Some of these measures may have significant implications for local authorities as employers, in particular:

Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time working concluded by UNICE, CEEP and the ETUC

Council Directive 99/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP

46 Indeed, Art 153 TFEU (the legal basis for this directive) states explicitly that '(t)he provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.'

Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.

In essence, these directives aim to ensure equal treatment for part-time workers and those on fixed-term contracts, whose terms and conditions (for example on pensions and holidays) have often been inferior to those of full-time colleagues with permanent contracts.

Another recent initiative stemming from the EU-level social dialogue is the 'Framework of Actions on Youth Employment', which focuses on 'the link between education, young people's expectations and labour market needs, taking into account young people's transition into the labour market, in an effort to increase employment rates in general'[47]. This includes concrete recommendations to member states and the EU institutions as well as actions for the social partners themselves. While this is likely to result in voluntary measures rather than binding legislation, it may well affect local authorities in their role as employers, including in negotiations with trade unions. The Annex to the Framework details case studies from member states, some of which involve initiatives by public sector unions and employers at the local level.

Equal opportunities for men and women in the labour market is a long-standing EU objective, albeit one that has been difficult to achieve in full. More recently, the EU has begun to combat other forms of discrimination, in particular on grounds of racial or ethnic origin, and outside as well as inside the labour market.

The key elements in the *acquis* as regards the labour market are:

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)

Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

In addition, in 2008 the Commission proposed a directive to implement the new aim enshrined in Art 10 TFEU of combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation[48]. This has been held up in the Council (the latest discussion being in December 2011), but may well (along with the working time directive) resurface when the macroeconomic situation improves. Local authorities in acceding countries should be aware that these are areas in which EU legislation continues to develop.

One important principle common to legislation in the field of non-discrimination is that both direct and indirect discrimination, as well as harassment in some cases, are covered[49]. In other words, employers (and service providers) need to look beyond obvious forms of discrimination. As regards labour market measures, the field of application is broad. The directive on equal treatment regardless of racial or ethnic origin, for example, applies to all persons and sectors of activity regarding:

- access to employment and to unpaid activities, specifically during recruitment
- working conditions, including those concerning hierarchical promotion, pay and dismissals
- access to vocational training
- involvement in workers' or employers' organisations, and in any professional organisation.

It also covers access to social protection and health care, education, social advantages and access to goods and services, particularly housing. Non-discrimination in the provision of goods and services is covered briefly in the next section.

47 Adopted in June 2013 by the 'European Social Partners': the European Trade Union Confederation (ETUC), the Confederation of European Business (BusinessEurope), the European Association of Small and Medium-Sized Enterprises (UEAPME), and the European Centre of Employers and Enterprises Providing Public Services (CEEP).

48 Proposal for a Council Directive of 2 July 2008 on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

49 Direct discrimination: where one person is treated less favourably on grounds of sex, race, etc. than another is, has been or would be treated in a comparable situation. Indirect discrimination: where an apparently neutral provision, criterion or practice would put persons of one sex, race, etc. at a particular disadvantage compared with persons of the other sex, another race, etc. unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

In addition to the binding legislation outlined above there are a number of agendas, frameworks, strategies and so forth in the employment and social field. Many of the measures listed as current have in reality been largely eclipsed by the latest policy coordination processes (outlined in the next section), but there are exceptions, such as the Strategy for equality between women and men or the European Disability Strategy [50].

There is also a body of EU legislation on health and safety at work, of which the key element is the framework directive:

Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

Under this are around 30 specific directives, regulations, recommendations and communications covering areas including use of equipment (e.g. display screens), specific groups (e.g. pregnant workers), the workplace (e.g. mines or ships), and protection from exposure to hazardous substances. Many of these standards and rules are of relevance to local authorities as well as to other employers, and will need to be observed (although in principle this need not involve more than following the national health and safety regulations, assuming the EU rules are correctly transposed). As with the working time directive (which also has its legal basis on health safety grounds), local authorities in many countries play a role in enforcing health and safety regulations.

5.2.2. Local authorities as service providers and policy makers

As noted above, EU action on the anti-discrimination front has been extended to cover discrimination outside the labour market. Legislation in this area might have implications for local authorities as providers of services and welfare as well as in their role as employers.

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between women and men in the access to and supply of goods and services.

The above-mentioned 2008 proposal for a directive to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation would also be relevant here if eventually adopted.

There are several regulations and directives relating to the coordination of social security systems, including supplementary pension rights and patients' rights to health care in other EU countries. These may be of relevance to local authorities with significant responsibilities in health care, where tourism or immigration might result in increased costs for treating non-nationals. But measures in this field are not in general of major direct relevance to local government.

Although outside the scope of the employment and social policy titles of the Treaty, it is worth noting here that local authorities are also subject to the EU *acquis* on free movement of persons, in particular the prohibition of discrimination between EU nationals. This is relevant

> for local and regional authorities in their capacity as employers, but also extends to their actions in various areas of policy such as civil registration matters, issuing of driving licences, social housing, town planning, etc. (Hessel 2006, p. 97).

Employment and social policy has long been an area of tension between those seeking to guard national sovereignty and those wishing to establish minimum EU standards (in part to prevent 'social dumping', whereby poor working conditions, low pay, etc. constitute an unfair competitive advantage according to some). Policy coordination allows the EU to have some say on these matters without imposing any binding rules.

50 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 21 September 2010 – Strategy for equality between women and men 2010–2015, COM(2010) 491 final.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 15 November 2010 – European Disability Strategy 2010–2020: A Renewed Commitment to a Barrier-Free Europe, COM(2010) 636 final.

51 Its origins lie in Art 121 TFEU, which provides for broad guidelines and recommendations in the field of economic policy. The 1997 Amsterdam Treaty added a similar process for employment. A similar 'open method of coordination' was launched for social protection and inclusion, initially with a less explicit legal basis (the Treaty does not mention guidelines and recommendations), but this was more firmly established with the 2001 Nice Treaty and the provisions of Art 160 on the Social Protection Committee.

The landscape of policy coordination has changed in recent years following the financial crisis of 2008, the debt crisis in the euro area and the ensuing moves to improve surveillance and strengthen economic governance [51]. Since 2010 the centrepiece has the 'Europe 2020' strategy for smart, sustainable and inclusive growth, which integrates the formerly separate guidelines on economic policies and employment [52] and the open method of coordination on social protection and social inclusion.

The key text here is the communication from the Commission, the main elements of which were approved by the European Council in March 2010:

Communication from the Commission of 3 March 2010 – Europe 2020 A strategy for smart, sustainable and inclusive growth, COM(2010) 2020 final.

In brief, the strategy involves adopting EU-wide targets and guidelines and country-specific recommendations. Member states then translate these into national reform programmes (including national targets) and monitor each other's progress through a process of peer review in ministerial meetings and committees. The aim is to identify best practices and promote mutual learning in policy areas that remain chiefly the responsibility of member states, although the Commission may issue policy warnings if recommendations are not followed.

The headline targets, which give an idea of the thematic scope of the strategy, are (by 2020):

- an employment rate of 75% for 20–64 year-olds
- investment in R&D of 3% of GDP
- greenhouse gas emissions 20% (or 30% if the conditions are right) lower than in 1990, 20% of energy from renewables and a 20% increase in energy efficiency
- early school-leaving rates below 10% and at least 40% of 30–34-year-olds to complete tertiary education
- at least 20 million fewer people in or at risk of poverty and social exclusion.

Priorities at EU level are set out in the Annual Growth Survey [53]. The latest country-specific recommendations, which are based on both the economic policy and employment chapters of the Treaty and also address aspects of social policy, were issued in July 2012 [54].

Two of the headline targets fall clearly within the employment and social sphere (an employment rate of 75 per cent for 20–64 year-olds and a reduction of at least 20 million in the number of people in or at risk of poverty and social exclusion). Country-specific recommendations might include, for example, measures to improve the employability of young people, to improve the public employment service's performance or to ensure that welfare reforms do not increase child poverty.

There are also several flagship EU initiatives, including in the social field the 'Agenda for new skills and jobs' and the 'European platform against poverty and social exclusion' [55].

A common complaint from local and regional authorities is that they are not invited to take part in the process of drawing up national reform programmes, despite extensive responsibility for implementing parts of the strategy. This has changed in Sweden with the 2012 national reform programme, to which SALAR made two contributions: one together with the other main social partners, and one as representative of regional and local authorities. However, it has taken several years of lobbying to achieve this, and even now the contributions appear as annexes, hastily added towards the end of the process. The challenge in future will be to see that SALAR's contribution is incorporated earlier in the process and reflected in the main text.

52 Formally, Art 148(2) still requires annual employment guidelines. In 2011 and 2012 the Council and Parliament simply decided to maintain the guidelines from 2010, with the intention of continuing this approach until the mid-term review of the Europe 2020 strategy.

53 Communication from the Commission, Annual Growth Survey 2013, COM(2012) 750 final. This includes the formerly separate Macroeconomic Report and Employment Report as annexes

54 Official Journal C 219, Volume 55, 24 July 2012, contains the recommendations for all member states.

55 COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, An Agenda for new skills and jobs: A European contribution towards full employment, COM(2010) 682 final, Strasbourg, 23.11.2010.

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, The European Platform against Poverty and Social Exclusion: A European framework for social and territorial cohesion, COM(2010) 758 final, Brussels, 16.12.2010.

Besides the opportunity to influence national reform programmes and to learn from best practices elsewhere in the EU, another reason to be interested in the Europe 2020 strategy is the explicit link with EU funding opportunities, as already noted in chapter 4 in the context of IPA. To give another example from the above-mentioned 'Agenda for new skills and jobs':

> 'EU funds, particularly the European Social Fund, can significantly contribute to the EU Agenda and act as a catalyst and as leverage in support of the Union's policy priorities.'

As well as the Social Fund (and corresponding IPA component) there is the new proposed Programme for Social Change and Innovation (2014–2020):

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a European Union Programme for Social Change and Innovation, COM(2011) 609 final, Brussels, 6.10.2011.

Of particular note is the first axis of the programme, which follows on from the current (2007–13) PROGRESS programme and is available to local and regional authorities (among others), and to candidate and potential candidate countries (as well as member states). Among the eligible actions are: development and dissemination of comparative analytical knowledge, information exchange, mutual learning and dialogue, and financial support for testing social and labour market reforms. The Commission proposes around € 575 million for this axis for the period 2014–2020 [56].

5.3. Comparison with Serbian legislation and practice

Serbia is facing big challenges in the process of approximating labour and social legislation with the EU *acquis*.

Among the challenges pointed out by local government representatives are: reform of social security systems that includes the concept of sustainability without loss of solidarity, a new direction in employment policy consistent with the adaptation of labour law and the increasing role of local governments in this area, and new answers to questions associated with demographic changes in some local governments, policy-making for young people, etc. Progressive, successful and sustainable reforms in the area of social policy and employment should be based on the values and common goals of EU member states. Such reforms should be based on the values and principles that characterise European society: full respect for human dignity, recognition and application of fundamental rights, social justice, solidarity and non-discrimination, equal opportunities and social inclusion. A discussion of the reform of social and employment policy should be not only transparent, but also open to suggestions and sharing of experience from local authorities that have had some success in the field. 'Good' evaluation of successful policies, good practices and creative imitations can be a very effective strategy. Also, demographic changes, such as a reduction in the fertility rate especially in some devastated regions and municipalities, should not be considered as a threat to society, economic development and the sustainability of social protection systems. Demographic changes of this nature require advance thinking about the extension of working time, retirement age, productivity and quality of work, the balance between older people's experience and younger people's desire for change and innovation, and so forth.

Table 5.1 provides selected information on the labour market situation in Serbia as an example of issues that are likely to arise in the context of policy coordination. These figures suggest, for example, that Serbia's comparatively low employment and high unemployment rates as well as the relatively high gender employment gap (the female employment rate being 73% of the male rate, as compared to 83% for the EU-27) are likely to come under scrutiny.

56 The final amount will presumably be lower, in line with the European Council agreement on a 23 per cent cut under heading 1a of the EU budget, as compared with the Commission's proposal.

Table 5.1: Selected labour market indicators, 2011

	Serbia	EU-27
Employment rate 15–64 year-olds	45.4	64.3
Employment rate males aged 15–64	52.4	70.1
Employment rate females aged 15–64	38.4	58.5
Total unemployment rate	23.0	9.7
Unemployment rate males	22.4	9.7
Unemployment rate females	23.7	9.8
Ratio of female to male enrolment in secondary education*	102.0	
Ratio of female to male enrolment in tertiary education*	132.0	

Source: Eurostat, World Bank for enrolment ratios (*)

The remainder of this section summarises the results of an investigation of seven local authorities in Serbia. Overall, this confirms that regulations applied in the Republic of Serbia in the area of employment and social policy are partially harmonised with EU standards. Further harmonisation of regulations in this area with the EU standards and values will have a positive effect on local self-government in the opinion of the local authorities surveyed, and the groups that will experience the greatest positive effects are: investors who will gain legal security through the harmonisation of regulations, and unemployed people who get a job as a result of investments linked with implementation of the *acquis*. These positive effects should have a long-term impact (more than one year from the acceptance and application of EU standards and values that are not already in place) in the estimation of five local authorities, while the other two consider that the impact will be short-term, and that the long-term effects cannot be predicted (depending as they do on many other circumstances and influences).

A more complete implementation of the standards and values of EU employment and social policy through local policies will have a particular impact in terms of: better organisation and clearer responsibilities of the local self-governments, the need for regionalisation of institutional infrastructure and the need to implement the laws in the same way throughout the entire territory of the Republic of Serbia.

The research undertaken generally confirmed that local authorities have very limited institutional, administrative, and especially financial capacities for the implementation of existing responsibilities or the introduction of the new responsibilities stemming from EU legislation in the area of employment and social policy. Perhaps this explains why local authorities have participated at most partially in the current process of harmonisation of those regulations (three of the surveyed local self-governments confirmed partial participation, while four did not participate at all). Among the capacities that local self-governments need, their representatives point especially to: qualified personnel, infrastructural potential (primarily working space, followed by technical equipment) and, finally, financial resources.

Legislation on local social dialogue in the Republic of Serbia is only partially harmonised with the EU regulations, according to the representatives of surveyed local self-governments. The basic reasons for low impact of social dialogue at the local level, according to the results of the research are: unqualified social dialogue actors, their lack of competence, limited possibilities for action on account of the general economic conditions and the legislative regulation that limits the possibilities of negotiation at the local level. The Law on the Social and Economic Council provides for Local Social and Economic Councils. In addition to this, the recent Law on Employment and Insurance in Case of Unemployment provides the opportunity to establish Local Employment Councils (LECs). The Councils are advisory bodies that give opinions and recommendations on questions of interest for the advancement of employment, such as: recruiting plans, Active Employment Policy programmes and measures, employment standards, etc. Although 120 LECs have been established in the territory of the Republic of Serbia, the interviews with representatives of surveyed local authorities in which the councils exist (six out of seven) suggest that their domains are limited, for all the reasons mentioned above.

In keeping with the answers of the representatives of local authorities it can be concluded that in the area of social protection the jurisdiction is divided between central and local authorities. The central authorities provide different types of financial support, such as material security, elderly care, child welfare, parental benefits or maternity allowance. In other areas, the social protection system is highly decentralised (only dormitory accommodation and foster care are financed by central authorities). Social services have passed under the jurisdiction of the local authorities.

A total of 33 different social services are organised at the local level (that is, local governments make decisions on funding).

Table 5.2: Number and type of local social services

Type of service	Number of services
Services for children and young people	15
Services for adults and the elderly	9
Services that are equally used by all user groups, or services that are classified as family support services, and support services to victims of trafficking and victims of domestic violence	9
TOTAL	**33**

However, not all local authorities provide all, or even any, of these services. In March 2012, as reflected in decisions on the expanded rights and the budgets of local governments, 137 local authorities provided a total of 412 services, while 37 local authorities failed to organise any social services.

When it comes to services for ***children and young people***, the following services are usually organised:

Table 5.3: Local services for children and young people

Type of service	Number of local authorities
Living for children and youth with disabilities	64
Housing support for young people who have grown	19
Living for children and youth with physical disabilities	14
TOTAL	**97**

Among the services are intended for ***adults and the elderly***, the most common are:

Table 5.4: Local services for adults and elderly people

Types of services	Number of local authorities
Help and home care for adults and elderly people	82
Club for Elderly	30
Shelter for adults and elderly people	12
TOTAL	**124**

Representation services for the ***whole family*** include:

Table 5.5: Representation services for the whole family

Type of Family Services	Number of local authorities
Counselling for Marriage and Family	17
Social housing in protective terms	11
Safe House (and shelter) for women and child victims of domestic violence	5
TOTAL	**33**

When it comes to ***service providers***, the data show that the local government depends more on social welfare institutions in the public sector than on civil society organisations:

Table 5.6: Providers of local services

Service provider	Number of services
Centre for Social Work	201
Social welfare institutions	112
Civil society organisations – associations	99
TOTAL	**412**

The results of the survey of local authorities suggest that gender equality legislation is another area in which harmonisation with EU regulations is not complete in the Republic of Serbia. The number of women who participate in local governing authorities is still low (though the tendency for that number to increase is encouraging) and activities of local authorities to promote gender equality are primarily focused on: encouraging greater women's participation in government (their participation in city/municipal councils is less than one-fifth, and in city/municipal assemblies over one-third) and companies established by the local government.

The results of the survey conducted suggest that local authorities lack a clear idea of what the EU *acquis* actually entails. Indeed, answers indicate that some local representatives do not even know what the EU *acquis* is. In the field of social dialogue, ILO standards are generally identified with the EU *acquis*, and the comments and recommendations made by local representatives may simply reflect areas where they see room for improvement. Local representatives may assume that the improvements they seek are reflected in defined EU standards, but this is not always the

case (for example, in areas such as social dialogue or participation of women in government).

As regards the participation of women, for example, all surveyed local governments have stressed that the percentage of their participation in the Assemblies is the result of the stipulated minimum (one-third), but when it comes to the decision making process (in councils, public enterprises, etc.), their participation is reduced. Thus, recommendation received from the respondents was that the minimum participation of women in these bodies should also be prescribed, as a way to increase it and, as they explained, 'to be in line with European standards'.

This lack of familiarity with the EU *acquis* may explain why local representatives' responses to the survey tended to be quite general, without a clear picture of exactly what additional resources might be needed. Therefore, it is necessary to continue with activities primarily focused on improving their knowledge, strengthening the structure of human resources in the local development offices, project teams, etc. and improving mechanisms for cooperation with all units at the national level with responsibility for employment, social policy and the European integration process.

Finally, the results of the survey point to several recommendations that, in the view of local representatives, would help to improve the implementation of existing responsibilities and to introduce new ones in the area of employment and social policy:

- More intensive common action by local self-governments through SCTM and improved application of national legislation (even if further regulations are not fully harmonised with EU regulations, improved implementation is better than formal harmonisation with the EU rules but without effective implementation)
- Involvement of local self-governments in the process of decision-making about the fate of companies in which the process of privatisation is delayed (companies of this type provoke the biggest problems in the area of social policy and employment).
- People who are in charge of making the laws should 'go into the field', to sit and talk with local authorities.
- Preparation of a 'map for investors' showing where they can invest their capital in accordance with economic criteria, and presentation of this map through SCTM (until than the effective criteria will be political affiliations and personal contacts).
- The introduction of new jurisdictions for local authorities must be followed by the possibility to employ new experts (since personnel capacity at present is insufficient).

5.4. Capacity to affect the outcome

5.4.1. Influence at the EU level or through the accession negotiations

There is no realistic prospect of Serbia obtaining special arrangements, derogations or transition periods in the employment and social field (even though the UK had an opt-out from the 'Social Chapter' of the Treaty between 1991 and 2007). The above-mentioned opt-outs from the weekly limit imposed by the Working Time Directive are derogations allowed in the directive itself.

Transitional measures in the area of free movement of persons may well be applied (allowing current member states to regulate access to their labour markets by Serbian nationals, and Serbia to apply reciprocal restrictions), as in the case of other recent enlargements. (But the *acquis* on non-discrimination between EU nationals in other respects, including access to public services, will still apply.)

The EU-level social dialogue is an important channel of influence for local authority associations in countries where they serve as one of the main representatives of public sector employers. The cross-sectoral social dialogue takes place between the European Centre of Employers and Enterprises providing Public services (CEEP), BusinessEurope (private employers), the European Trade Union Confederation and the European Association of Craft, Small and Medium-sized Enterprises.

Serbia does not yet have a national section in CEEP, but when one is established it will be important for SCTM to ensure that local authorities are represented along with other public sector employers (national authorities, national and local public enterprises and others). It is interesting to note that the President of the national section for several countries comes from an association of local and/or regional authorities or public utilities. SCTM may wish to consider taking the lead, perhaps together with local public utility companies, in establishing a Serbian section, which might also

help in gaining recognition in the national social dialogue.

As well as the cross-sectoral social dialogue there are currently 41 sectoral dialogues between employer and union representatives in different sectors of the economy. Some of these may also be relevant to local authorities (SALAR, for example, participates in the ones on local and regional government, hospitals and education). The top priority (at EU level), however, should be to ensure participation in the cross-sectoral dialogue.

As regards policy coordination, there is little if anything to negotiate. The Committee of Regions has set up the Europe 2020 Monitoring Platform in order for local and regional authorities to have their say in the design and implementation of the Europe 2020 strategy. This involves, among other things, a 'Territorial Dialogue' between local and regional representatives and top political representatives of other EU institutions on the eve of the spring European Council. However, membership of the platform is restricted to local and regional representatives of member states.

Prior to accession, networking opportunities with local authorities or associations from EU member states and other candidate countries should not be overlooked. Besides the benefits of sharing information, some funding opportunities (e.g. calls for proposals under the PROGRESS programme) are only available to networks of local authorities. SCTM may be able to form partnerships with other associations on key questions for Serbia and other EU countries during the coming financial perspective, perhaps the most obvious example being youth unemployment.

5.4.2. Influence at the national/provincial level, including on transposition of legislation

In the field of workers' rights, equal treatment and health and safety, since much of the *acquis* takes the form of directives, it is important for SCTM to be involved as far as possible in the process of transposing these measures. Local authorities are directly concerned in their role as employers, and so might reasonably expect to be consulted before the government tables proposals as well as during any subsequent wider consultation process. This may be easier said than done, depending as it does on the balance of power between central and local government. But the point to stress is that local government can play a valuable role in ensuring effective implementation at the local level.

Specifically regarding the working time directive, if local authorities expected this to be problematic, they could try to persuade the Serbian government to invoke the opt-out clause (and notify the Commission). However, since there is a chance that the opt-out may be removed in future revisions of the directive, it may be unwise to build up a system that relies on this. In other words, it may be advisable to move towards formal implementation of the 48-hour limit (even in the health sector).

As regards social dialogue, it seems important for SCTM to secure recognition as an employer's representative (as well as a local government interest organisation) at the national as well as at the EU level. EU accession may well be helpful in this regard since social partnership (at national and local levels) is clearly one aspect of the 'European model', even if there are several different variants of this among present member states (e.g. wide variation in union density, more or less conflictual industrial relations).

EU accession will hardly force a new social dialogue upon Serbia, and indeed there are several recently acceded member states where employers and unions still feel that they have little say on labour market issues. Nevertheless, the EU Commission (among others) has raised concerns about the present state of the social dialogue in Serbia. From the 2012 progress report:

> Criteria for social partners' representativeness in social dialogue are still an issue: several registered trade unions are still not recognised and concerns remain as to the criteria for participation of employers' organisations. Social dialogue remains limited. The Economic and Social Council was not consulted regularly on draft laws and its meetings were often not attended by government officials. At local level, dialogue has generally been non-existent.

With an eye towards the more consensual models of social partnership (e.g. Sweden), SCTM's position vis-à-vis the government would be strengthened if it could present a united front with the relevant trade unions in arguing for a social dialogue for the local public sector. It appears there may be interest from the side of the unions, who currently lack a counterpart for collective bargaining in the area of communal services. The

carrot for the national authorities would be that a spirit of mutual trust in the tripartite relationship (unions, employers, government) could improve labour market performance as well as the implementation of legislation in this area.

In the field of policy coordination, the key challenge is to gain recognition of local authorities' role in implementing many of the actions agreed under the umbrella of the Europe 2020 strategy. The Europe 2020 communication (p. 30) states explicitly that local and regional authorities should be involved, for example by calling on

> all parties and stakeholders (e.g. national/regional parliaments, regional and/or local authorities, social partners and civil society, and last but not least the citizens of Europe) to help implement the strategy, working in partnership, by taking action in areas within their responsibility.

Experience from other member states (including SALAR's efforts to contribute to Sweden's national reform programme, as noted above) suggests that local authorities need to actively and continuously assert this principle of partnership (which is also relevant in the context of the structural funds – see chapter 4). The same applies to pre-accession funding and to analogous national reform programmes in Serbia.

5.4.3. Preparations at local level including support from SCTM

Assuming that EU directives are transposed correctly, and especially if SCTM has been consulted during the transposition process, it should be sufficient for local authorities to follow national regulations on workers' rights, equal opportunities and health and safety, without any additional need for advance preparation. SCTM may nonetheless play a useful role in monitoring transposition and in providing early warning of EU developments on the horizon.

Local authorities may also play an active role as employers by ensuring that their own recruitment policies are fully in line with wider employment and social policy objectives, including gender equality. The weaker-than-expected position of women on the labour market in Serbia (see selected indicators in section 5.3) means that a gender perspective will be critical to any strategy to reach the EU target of 75% employment for 20–64 year-olds. It also means that inactive and unemployed women represent a substantial untapped resource for public as well as private employers.

Likewise, the very high rate of youth unemployment in Serbia (close to 50 per cent according to recent press reports) unfortunately fits all too well with EU priorities, including the 'Framework of Actions' drawn up by the social partners (noted in section 5.2). A strategy to address this, ideally in cooperation with the unions and containing concrete measures, might also help in gaining influence at the national level. Among the measures detailed in the Annex to the 'Framework of Actions', for example, is a Swedish scheme whereby 19–25 year-olds can be employed (by municipalities among others) for a one-year probationary period at 75% of the normal salary provided that 25% of their working time consists of training and introduction activities.

Contributions and examples of best practice from local authorities in this area are bound to be welcome at both national and EU level, besides being good for local economic development and capacity-building. In some areas, local authorities may wish to go beyond formal compliance with the *acquis*. For example, gender equality in the supply of goods and services is one area where they can play an exemplary role. Best practice here would involve assessing the gender impact of the full range of local services, not only those with an obvious gender dimension (e.g. childcare services) but also where there may be less obvious differential effects (e.g. public transport). Indeed, SCTM is already taking action in this area, in line with its December 2012 gender declaration, by providing support for gender mainstreaming at the local level (including training, information, exchange of best practices, etc.). For example, the municipal partnership of Växjö, Varvarin, Kula and Niš within the present project is evaluating the gender impact of investments in areas such as public lighting. Women and men may be affected differently in this case because of the implications of public lighting for safety and security.

Those seeking related funding and networking opportunities prior to accession may find it useful to familiarise themselves with the language of EU policy coordination. The Committee of the Regions (2012) has produced a useful handbook for 'regions and cities' wishing to get involved in the Europe 2020 strategy, including details of EU flagship initiatives, funding opportunities and

best practices from local and regional authorities throughout the EU.

5.5. Indicators of potential outcome

Although there is a substantial body of binding legislation in the employment and social field, the risk for local authorities of being caught unawares is lower than in the case of public procurement and state aids. The rules are relatively clear, there should be plenty of early warning through national transposition, procedures are less complicated and there is less risk of being taken to court. Formal compliance with the EU *acquis* is mostly a question for the national government.

However, for the sake of completeness, it should be noted that in some cases national courts must take account of EU directives even when these have been incorrectly transposed. Thus it is possible that a national court could rule against a local authority for failure to comply with EU directives in this field even though it has complied with the national rules [57].

At present, further efforts are needed to bring Serbian law and/or implementation thereof into line with the *acquis*, in particular in the areas of fixed-term work, part-time work, working time and gender equality. Certain direct costs may thus be anticipated.

The direct costs of reducing working time for certain staff or of granting part-time and temporary staff the same terms as full-time permanent employees may in principle be estimated. For example, in Sweden the cost to municipalities and counties of the part-time and fixed-term directives was estimated at around SEK 420 million (c. € 50 m), mainly on account of improved holiday, pension, health and life insurance benefits (Statskontoret 2005, p. 57). The costs would presumably be much lower in Serbia, since municipalities do not have responsibility for most of health and education.

Of course there may also be benefits, for example in the form of higher hourly productivity or greater employee satisfaction. Similar calculations might be made, in principle, for health and safety legislation. In the case of anti-discrimination legislation, it would be difficult to argue that outlawing discrimination on grounds of sex, race, etc. could represent anything but a net benefit.

Indeed, SCTM's Declaration on gender equality (signed in December 2012) states that gender equality is one of the keys to capacity development in local government. Action on this front is thus likely to yield benefits in other areas (such as public procurement or participation in EU funding programmes) where heavy demand for planning and administrative capacity can be expected. Although not conclusive, there is also some evidence to suggest that greater representation of women in local (and central) decision-making, including public procurement, may help to combat corruption (see Lundkvist & Aleksov 2013 for references).

To the extent that local authorities are relatively progressive on workers' rights, equal treatment, non-discrimination, health and safety and so on (given general expectations of transparency and responsibility in the public sector), it might be argued that both costs and benefits in this field will be relatively low. (The impact on the private sector, especially in sectors such as insurance where differential treatment between men and women is common, may be rather greater.) Nevertheless, the assessment in section 5.3 points to substantial gaps between Serbian legislation and practice on the one hand and the EU *acquis* on the other, including in the public sector.

Much has been made (by some politicians and media outlets) of the potential costs of non-discrimination vis-à-vis other EU nationals in areas such as social security and health, but even if such concerns were justified they do not seem to be of great relevance to local government in Serbia.

Though hard to quantify, there are potential benefits in terms of influence on policy if SCTM is able to participate fully in the social dialogue.

57 Directives in this field may have 'direct effect' (where courts must disregard national law in the event of a conflict with directives) on public bodies in their capacity as employers (e.g. Case C-188/89 Foster et al. v British Gas). They may also have 'indirect effect' (where national courts must interpret national law consistently with directives even if direct effect does not apply, e.g. Case 14/83 von Colson and Kamann v Land Nordrhein-Westfalen).

Having two hats to wear (one as a representative of employers, one as local government) often allows local authority associations to have a say in additional areas of EU policy (e.g. in monitoring committees for the European Social Fund, as noted in chapter 4). To the extent that EU accession can help SCTM to gain recognition as a social partner at national as well as EU level, the benefits could far outweigh any costs resulting from the implementation of EU labour law.

The impact of policy coordination at the local level is difficult to assess. The benefits are somewhat diffuse and uncertain (learning from best practice elsewhere, links with EU funding opportunities, potentially greater influence on EU issues at national level). The personnel costs of keeping up to speed with Europe 2020 developments and lobbying at national level will probably fall mainly on SCTM. If individual local authorities choose to get involved, it will be a voluntary decision that local leaders presumably deem worthwhile.

Lastly, it is interesting to note that, judging by the survey results discussed in section 5.3, local authorities' perception of what the EU *acquis* entails appears to differ somewhat from the reality. For example, issues such as pension reform, social dialogue and representation of women in decision-making are stressed. But while such questions can and do figure in the context of policy coordination, there is very little 'hard' legislation. Of course, local authorities may well wish to promote progress in these areas regardless, and reference to 'European standards' may be a powerful argument. But these findings also suggest the need for improved information on what the *acquis* will actually require.

6. Energy efficiency

6.1. Overview of the impact of accession on local authorities

Municipalities are affected in several ways by the EU *acquis* (and forthcoming initiatives) on energy efficiency:

- They are large consumers of energy (in buildings, lighting systems, water treatment plants, etc.), which means that anything influencing the cost of energy affects the local budget (although in some cases increases can be passed on to final users in the form of higher charges).
- In many countries they also distribute and/or retail energy, whether directly or through subsidiaries owned and/or controlled by the municipality, or in some cases through concession contracts with third-party suppliers.
- As planning authorities, they have a significant influence on the energy efficiency of investments within the municipality (especially in buildings) and on the conditions for energy supply (especially district heating and cooling).
- As part of the public sector, they are often expected to set a good example with their own investments and to encourage citizens and organisations to improve energy efficiency in line with local, national and EU targets.

The impact of accession in this area will depend critically on how EU measures are transposed and implemented at the national level. There is clearly a tendency for member states to expect their own public authorities to go further than the EU minimum requirements. This is not necessarily a problem for local authorities; indeed, experience suggests that there is much scope for investments in energy efficiency that pay for themselves within a few years.

However, it will be important for municipalities to retain enough flexibility to tailor their approach to local conditions, and that resources are available to match responsibilities. Member states are not always as eager to help with financing the costs of energy efficiency plans, performance certificates and the up-front costs of capital investments in buildings, equipment and infrastructure needed to realise potential improvements. Local authorities should try to establish the principle that whoever is responsible for implementing the EU *acquis* receives appropriate financial and technical support. Making effective use of EU funding opportunities will be of particular importance in a climate of austerity in national and local budgets.

While reliable and detailed information is scarce, this is at least an area where concrete costs and benefits can in principle be estimated. One strategy that SCTM might consider is to commission a study of a typical or representative municipality, detailing energy usage, the estimated costs of meeting specific EU obligations, and investments (e.g. renovation of buildings, refurbishment of distribution infrastructure, new generation or cogeneration techniques) that would be needed to hit likely targets for energy efficiency, renewables and greenhouse gas emissions. This might serve to highlight the false economy in failing to secure finance for up-front investments.

6.2. Key aspects of the EU *acquis* and related issues for local government

The key aspect of the *acquis* in this area is now the recently adopted energy efficiency directive:

Directive 2012/27/EU of the European Parliament and of The Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC.

This sets out a common framework of measures, notably with a view to attaining the EU's target of a 20 per cent increase in energy efficiency (part of the Europe 2020 strategy)[58]. It aims to remove barriers in the energy market and overcome market failures that impede efficiency in the supply and use of energy, and provides for indicative national energy efficiency targets for 2020. (In this respect the adopted version was watered down compared with the Commission's proposal for a binding EU-wide target of a 20% improvement.[59])

The public sector is to play an exemplary role, but in the final version of the directive this concerns mainly central government. At least 3 per cent of the floor space of central government buildings is to be renovated each year to meet minimum energy performance objectives, and central governments are (with certain exceptions) to purchase only products, services and buildings with high energy-efficiency performance.

In the Commission's proposal these provisions also applied to local government (and other contracting authorities under the public procurement rules). In the final version, member states are to encourage local and regional authorities to follow the exemplary role of their central governments in these areas, including by adopting an energy efficiency plan and putting in place an energy management system (among other measures).

Member states may find it difficult to meet national targets without a significant contribution from local governments, since they are major consumers of energy. Municipalities should therefore be prepared for the national implementing legislation to include incentives, targets and requirements that apply to them.

The deadline for transposition of the new directive is 5 June 2014, which means that national legislation is still under discussion. Nevertheless, there is considerable experience to draw on, including at local level, from the implementation of the measures that are amended or replaced by the new directive, in particular[60]:

Directive 2006/32/EC of 5 April 2006 on Energy end-use Efficiency and Energy Services and repealing Council Directive 93/76/EEC

Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings.

The Energy Services Directive (2006/32/EC) established national indicative energy savings targets and required member states to submit action plans specifying how they intended to meet these targets. The public sector was to play an exemplary role, applying at least two of six requirements listed in *Annex VI* of the directive. These included (for example) requirements to replace or retrofit existing vehicles, to purchase or rent energy-efficient buildings and to purchase equipment that has energy-efficient consumption in all modes.

As an example of how national transposition may go further than EU requirements, the Irish government decided to set an indicative target of a 33 per cent energy saving by 2020 for all public bodies, including local authorities. While still only indicative, this is considerably tougher than the minimum saving of 9 per cent between 2008 and 2016 required by the directive. Of course, the difficulty of hitting targets depends on the degree of progress already made; countries that have already made substantial energy savings in recent years will find it harder to meet ambitious targets in future.

In Sweden, the national implementing legislation did not include municipalities among the public authorities required to apply Annex VI measures. Instead, municipalities were able to persuade the government to provide financial support of around SEK 300,000 (c. € 35,000) each to establish and implement an energy efficiency strategy. As part of this strategy they had to set targets for 2014 and 2020 and select at least two of the Annex VI actions, but only if they chose to apply for support (which 269 out of 290 did)[61].

58 A 20% cut in annual primary energy consumption for the EU as a whole, compared with 2005.

59 Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on energy efficiency and repealing Directives 2004/8/EC and 2006/32/EC, COM(2011) 370 final, Brussels, 22.6.2011.

60 Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products is mainly relevant for manufacturers of energy-using products. Directive 2004/8/EC on cogeneration is mentioned below.

61 See Sweden's second national action plan for energy efficiency, available in English along with those of other member states from http://ec.europa.eu/energy/efficiency/end-use_en.htm.

The Energy Performance of Buildings directive (2010/31/EC, a recast of a similar directive from 2002) requires member states to set minimum standards for the energy efficiency of new buildings and existing buildings undergoing major renovation. Public buildings with a useful floor area of over 500 m^2 from 2012 (and 250 m^2 from July 2015) that are frequented by the public are supposed to display an energy performance certificate in a prominent place. Member states are also supposed to encourage public bodies to follow the recommendations on improving energy efficiency that are made as part of the certification process.

The reduction in the threshold (from 1,000 m^2 initially) was delayed in part because of lobbying from local government associations. Problems at the local level include not only the cost of obtaining certificates and investing in improved energy efficiency in line with recommendations, but also the shortage of accredited assessors in some areas. Again, the national transposition of the directive can make a big difference. In the UK, for example, the government decided on a special energy performance certificate for public authorities that has to be renewed annually (instead of remaining valid for up to 10 years, as the directive allows). While individual local authorities report that the annual approach has led to valuable savings and helped to raise public awareness, the Local Government Association (2010a, p. 14) notes that it has put pressure on councils and perhaps led to undue focus on process rather than outcome.

Local authorities may also play a role in enforcing energy efficiency standards, particularly in the context of planning permission and building regulations. In this respect, 'gold-plating' of minimum EU standards may be seen as positive if it allows municipalities the discretion to set higher energy efficiency standards as part of local environmental policy. In Sweden, for example, municipalities may require energy improvements as part of all transformations, not only major renovation.

In Sweden, local authorities are also responsible for supervising the display of energy performance certificates in private buildings. According to the EU rules, all buildings or building units constructed, sold or rented to a new tenant must have a certificate. Buildings frequented by the public with a useful floor area of over 500 m2 are required to display their certificate if one has been issued.

One area of special relevance to local authorities is cogeneration or combined heat and power (CHP), especially in the context of district heating. The key element of the *acquis* currently in force is the Cogeneration Directive, which requires member states to encourage the use of high-efficiency CHP in various ways, including by providing guarantees of origin for CHP and ensuring preferential access to electricity networks:

Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC.

This approach is reinforced in the new energy efficiency directive (which repeals 2004/8/EC). For example, member states must carry out a comprehensive assessment of the potential for high-efficiency cogeneration and efficient district heating and cooling, and adopt policies that encourage:

> ... the due taking into account at local and regional levels of the potential of using efficient heating and cooling systems, in particular those using high-efficiency cogeneration. Account shall be taken of the potential for developing local and regional heat markets.

Local authorities may be affected as owners, controllers and/or regulators of local district heating utilities. In principle, a comprehensive assessment might pave the way for much-needed investment in district heating infrastructure in many cities, and perhaps the construction of new facilities in areas of sufficient population density and/or industrial demand. Indeed, from June 2014, the directive will require assessment of the scope for high-efficiency cogeneration whenever thermal electricity plants, industrial installations and district heating or cooling systems above a certain capacity (thermal input exceeding 20 MW) are installed or substantially refurbished.

In practice, the key question is likely to be how investments in infrastructure will be financed, particularly in cases where the revenue from user charges is insufficient. There is a wide variety of organisational arrangements in place, including limited stock companies or holding companies owned by the municipality, leasing of infrastructure to private sector operators, outright privatisa-

tion of infrastructure or municipal cooperation (see e.g. Energy Charter Secretariat 2006). It should be noted here that municipal funding and public-private partnerships will need to be carefully assessed for compliance with the public procurement and state aid rules (see chapters 1–3). For example, heating allowances to poor families are easier to deal with than operating subsidies to the district heating company.

Other EU energy objectives, including greater use of renewable energy sources and increased energy security, are also relevant in the context of district heating. While CHP district heating that uses natural gas makes a welcome contribution to energy efficiency, its longer-term viability may still be affected by EU measures that seek to reduce the consumption of fossil fuels and/or dependence on imports from outside the EU.
In view of the EU's longer-term target of reducing greenhouse gas emissions to 80–95% below 1990 levels by 2050, the measures adopted as part of the Europe 2020 strategy are merely the beginning. Pressure to improve energy efficiency as well as to increase the share of renewables in the energy mix is likely to increase, as indicated by the Commission's Energy Roadmap 2050:

> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Energy Roadmap 2050, COM(2011) 885 final, Brussels, 15.12.2011.

According to this, energy efficiency, especially in new and existing buildings, should remain the prime focus along with greater use of renewable energy. The role of local organisations and cities in future energy systems is also stressed, and questions to be addressed include:

> to what extent urban and spatial planning can contribute to saving energy in the medium and long term; how to find the cost-optimal policy choice between insulating buildings to use less heating and cooling and systematically using the waste heat of electricity generation in combined heat and power (CHP) plants.

It should also be noted that other areas of the EU *acquis* may affect municipal competencies in the field of energy efficiency. For example, one way that municipalities have been able to play an exemplary role in the past is through municipal housing. But compliance with the state aid rules, among other things, means that municipal housing companies are now supposed to be run on a commercial basis, with any public service obligations transparently defined and compensated (see section 1.3.3). This makes it difficult for municipalities to use them as a broader instrument of policy, for example by requiring them to make investments in energy efficiency that would put them at a disadvantage to private landlords.

6.3. Comparison with Serbian legislation and practice

Serbian legislation has started to address energy efficiency. A Law on the efficient use of energy was enacted in 2013. The first National Energy Efficiency Action plan with indicative national targets for energy saving has been adopted by the Government in 2010 while the deadline for submitting the Second National Energy Efficiency Action Plan to the Secretariat of the Energy Community Treaty is 30 June 2013. The Law on Public Procurement enacted in 2012 introduces the principle of energy efficiency and allows energy efficiency to be designated as a selection criterion. This law also recognised energy efficiency labelling as proof for energy efficiency. The Law on Planning and Construction was enacted in 2009, and secondary legislation prepared after the adoption of this Law and the Law on Efficient Use of Energy have paved the way for harmonisation of the Serbian legislative system with numerous provisions of Directive 2010/31/EU (on energy performance of buildings).

However, the energy intensity of the Serbian economy remains higher than the world average and real improvements in energy efficiency are still some way off. Energy management at the local level is still at a very early stage of development, with only one municipality (Vrbas[62]) having completed its initial public building inventory, established baselines for energy consumption in these buildings and identified priority needs for energy efficiency improvements.

62 The work in Vrbas has been undertaken with the support of SCTM through the Exchange 3 programme.

While almost all municipalities performed some form of energy balance for the public sector over the past seven years within the framework of various donor-supported programmes, these balances were mostly incomplete, and even when complete were not utilised after the completion of the support activities.

In Vrbas a reasonably comprehensive energy balance indicates that around 4 per cent of the local authority's annual budget in 2012 was spent on energy costs for public buildings (electricity, heating and hot water, costs directly incurred from the municipal budget). An additional 2 per cent was spent on energy costs in the 'self-financing' public institutions that also received budgetary support from the local self-government (for example, water supply) and in public lighting. These figures do not include fuel costs for vehicle fleet or fuel costs incurred in public transport. On the other hand, households spent an amount equal to one-third of the municipal budget for energy purposes and a similar amount on the private transport of household members. Both figures indicate the significance that energy efficiency measures could have for the local budget and the local economy.

One issue of particular relevance for local authorities is provision of the district heating service that exists in 55 municipalities. This service is based on obsolete technology and on direct fossil fuel usage in heat-only boilers with a total capacity of 6,100 thermal megawatts. It represents a severe threat for local budgets and customers given the high price of the service, which at the same time does not cover the costs of its provision. State aid to these utilities is common practice. Initial implementation of energy efficiency measures and existing baselines clearly indicate significant scope for cost-efficient energy efficiency measures. However, unclear and unresolved property rights continue to pose challenges, in terms of both mixed incentives for energy efficiency measures and possibilities to raise capital for such interventions when needed.

6.4. Capacity to affect the outcome

6.4.1. Influence at the EU level or through the accession negotiations

No major issues are anticipated for the accession negotiations in this area, although it may be worth checking whether municipal involvement in district heating companies presents any state aid concerns (which might then be notified as existing aid – see section 2.4.1).

As regards lobbying on future legislation, the experience of SALAR experts with the recent energy efficiency directive is interesting. First, it was important to establish an early dialogue with the relevant national ministry once concrete proposals were on the table. Secondly, the lobbying process in this case was relatively brief, which meant that the Council of European Municipalities and Regions (CEMR) proved to be the most effective channel for local influence. CEMR was able to establish a focus group and provide coordinated input to the EU institutions. SALAR's Brussels office was also in contact with members of parliament and the Swedish representation to the EU.

The Committee of the Regions, on the other hand, tends to be a more effective channel when it comes to longer-term political messages, perhaps in a lobbying process that extends over several years. Involvement here is also important when it comes to 'calibrating' local politicians' understanding of the EU institutions and how the *acquis* influences local administrations.

Another advantage of CEMR for pre-accession countries is that they do not need to wait until accession before becoming full members. Since, as noted above, efforts to promote energy efficiency are only likely to intensify in future, engagement in the relevant committees, focus groups and networks may prove to be a valuable investment of SCTM experts' time.

6.4.2. Influence at the national/provincial level, including on transposition of legislation

The examples outlined above show that there is much scope for variation in how national authorities transpose EU directives in this field. There are perhaps two main concerns for local authorities here. First, they should be wary of overly bureaucratic or inflexible implementation that might limit their scope to achieve energy efficiency targets in the most cost-effective way. For example, it goes without saying that investments in energy efficiency in public buildings cannot be made in isolation, but must be part of a broader renovation plan. Secondly, municipalities should seek to avoid unfunded commitments, including the non-trivial costs of energy efficiency planning and performance certification as well as the cur-

rent and capital expenditure on energy efficiency programmes and investments that will be needed to hit targets.

Whether or not municipalities should be wary of more ambitious targets than the EU directives require depends partly on resources. If funding is available to help with up-front costs, then local authorities have a clear longer-term financial interest in energy efficiency investments, and the best strategy vis-à-vis the national and provincial authorities may be constructive engagement rather than seeking to argue against tougher targets. The relevant ministries will welcome success stories when it comes to drafting Serbia's national energy efficiency action plan.

Positive examples where local government has been able to link resources and responsibilities include the Swedish case mentioned above (where municipalities received state funding to draw up energy efficiency strategies).

Another strategy worth considering would be to produce a detailed assessment for a typical or representative municipality showing energy needs, the costs of specific EU obligations and investment opportunities that would help to meet Serbia's likely targets for energy efficiency, use of renewable sources, greenhouse gas emissions and so forth. Some options (e.g. converting district heating systems to burn biomass instead of fossil fuels) might require less up-front investment. Other more expensive options (e.g. converting existing heating plants to combined heat and power plants) might be shown to be viable but likely to go unfunded if municipalities have to rely on user charges and local budgets alone.

Loan finance may also help local authorities to overcome cashflow obstacles to replacing or refurbishing buildings, equipment and infrastructure. In the UK, the Department for Energy and Climate Change and the Welsh and Scottish governments fund Salix Finance, a not-for-profit company established to provide interest-free loans and co-financing for energy efficiency projects. According to Salix, the average project pays for itself within 3½ years and has a lifespan of 13½ years, which means 10 years of 'free' energy savings.

As noted in section 6.3 above, however, lack of clarity on property rights is a factor in Serbia that may limit municipalities' incentives to improve energy efficiency or to raise the necessary capital.

It will also be important to make good use of EU funding opportunities, such as (in due course) the Cohesion Fund (under which energy efficiency is a clear priority) or the European Investment Bank's European Local ENergy Assistance (ELENA) scheme, which has provided technical assistance for local CHP and district heating projects. There may also be scope, including for municipal projects, under components III of the Instrument for Pre-accession Assistance (IPA). Croatia has even used IPA Component V (rural development) funding for biomass district heating in relatively small municipalities (up to 10,000 inhabitants).

Where municipalities play a role in enforcing energy standards and/or supervising the display of energy performance certificates, an updated register indicating which buildings are liable will facilitate the task. Maintaining and updating such a register may be the responsibility of national authorities (as in Sweden, where the National Board of Housing, Building and Planning is responsible).

6.4.3. Preparations at local level including support from SCTM

Once national legislation transposing the energy efficiency directive enters into force, it is likely that local authorities will be required to develop a coherent analysis of their energy needs and a programme for increasing energy efficiency in a cost-effective manner. This would usually consist of many different types of measures, such as variable-speed pumps in water treatment plants, installation of biomass boilers, upgrades to public lighting, green procurement of vehicles, eco-driving training and comprehensive retrofits of public buildings, including wall and roof insulation, low-energy lighting and so forth. SCTM might be able to assist in developing a best-practice methodology for drawing up local energy-efficiency programmes.

Renovation of generation and distribution equipment and networks is another important source of efficiency improvements in cases where local authorities own and/or control this infrastructure. They may need to look at alternative sources of finance (e.g. private capital or user charges) where state funding is not forthcoming.

A good example of the indirect influence of the EU *acquis* in this area (and others) is on territorial planning, especially in cities. The energy efficiency directive makes no mention of this, yet it is clear that planners are adopting a more European perspective when it comes to sustainable urban development, of which energy efficiency is

a central aspect. In particular, planners play a key role in facilitating smart energy grids and transport infrastructure as well as compact and energy-efficient housing (Hoogeveen and Ribeiro 2011). The viability of district heating also depends on ensuring sufficient heat load density as well as planning permission and rights of way for facilities and pipelines.

6.5. Indicators of potential outcome

The EU *acquis* on energy efficiency is likely to involve significant additional responsibilities for local authorities (e.g. energy certification of buildings) as well as pressure to increase energy efficiency and the use of renewable sources as part of local energy policy.

Some figures from the UK Local Government Association (2010a) on costs of Display Energy Certificates (energy performance certificates for public buildings): £ 550 (c. € 640) in one London borough; £ 2,000 (c. € 2,300) in a more rural district in Devon. In the London borough around 100 additional buildings will be covered when the threshold falls to 250 m^2, meaning an additional cost of £ 55,000 or less (since smaller buildings are likely to cost less to assess and competition on the market for energy assessment is increasing).

Enforcement of EU rules will depend largely on the national authorities. Failure to implement directives here is mainly an issue between the member state concerned and the Commission/Court; an individual municipality's actions are less likely to come under the scrutiny of EU institutions or national courts than in other areas of the *acquis*. On the other hand, the national authorities may well decide on tougher standards for local government. But experience also suggests much scope for flexibility in defining standards and in taking into account existing measures (e.g. the energy efficiency directive allows national energy savings targets for 2014–20 to be reduced by up to 25 per cent on account of measures already taken during 2009–13).

It seems clear that there is significant potential at the local level in Serbia for investments to enhance energy efficiency and use of renewable sources. For example, preliminary studies in several municipalities indicate that a switch from fossil fuels to biomass (wood chips) in district heating systems would be feasible. At the same time, the lack of resources for up-front investments is evident, with district heating companies in most cases already dependent on support from squeezed local budgets and in debt to fuel suppliers.

While an ambitious implementation of the *acquis* will entail short-term costs for local authorities, these are likely to be outweighed in the medium term by the savings from increased energy efficiency. The EU rules do not require member states to set targets that would not be cost-effective [63]. The question is whether funds are available for up-front costs and capital investments. Accession might be seen as an opportunity if municipalities can use it to help secure the necessary resources, in which case a positive (financial as well as in terms of environment, energy security, etc.) outcome for municipalities seems likely. Otherwise, municipalities may find themselves in the uncomfortable position of having additional responsibilities that are not matched by additional resources, in which case accession may be deemed a missed opportunity.

63 Indeed, the efficiency of buildings directive says explicitly that member states shall not be required to set minimum performance targets that would not be cost-effective over the estimated economic lifecycle (Art 4).

7. Environment

7.1. Overview of the impact of accession on local authorities

The environmental chapter is one of the most ambitious and far-reaching chapters of the EU *acquis*. EU environment policy aims to promote sustainable development and protect the environment for present and future generations. It is based on preventive action: the polluter pays principle, fighting environmental damage at source, shared responsibility and the integration of environmental protection into other EU policies. Since the early 1970s, the EU has developed an extensive environmental *acquis* comprising over 200 major legal acts covering horizontal legislation, water and air quality, waste management, nature protection, industrial pollution control and risk management, chemicals, noise and forestry. For most member States, EU environmental legislation has driven almost 100% of national environmental policies. Due to its complexity and volume the approximation of the environmental legislation represents a major challenge for candidate countries.

The EU accession process has a huge impact at the national, regional and local level. However, it is at the local level where the impact is most directly felt. Implementation of the voluminous and ambitious EU environmental *acquis* represents a major challenge for local authorities in terms of administrative capacity and financial resources required to meet EU environmental standards. Local authorities are affected as planners, as regulators with responsibility for enforcing standards (for example, in air and water quality) and as service providers. Upgrading infrastructure in line with EU standards, for example in the areas of waste management and water treatment, will entail a major investment outlay both prior to accession and for at least a decade afterwards. These fundamental impacts of the EU environmental policy call for timely preparation of local authorities and awareness of their role in the approximation process.

This chapter provides an overview of the main requirements arising from the key pieces of EU environmental legislation, both horizontal and in the specific sectors of air protection, waste management and water protection. Rather than attempting to give a comprehensive account of all of the *acquis* (which amounts to hundreds of items), it focuses on the key elements for local authorities, and in particular the investment-heavy directives, which represent special legal, administrative and financial challenges to candidate countries. It assesses both the existing and possible future roles and responsibilities of local authorities. In addition, the chapter provides an overview of the institutions responsible for implementation and enforcement of the EU environmental *acquis* in Serbia, as well as the main challenges of the upcoming negotiation process.

The impact of accession in this area will depend crucially on local and national authorities' reaction to the challenges posed. There is a particular risk in this field of committing local authorities to additional responsibilities without allowing them the means to deliver on those responsibilities, which represents a fundamental challenge to local government. However, it is also possible for local government to act as a valuable partner in the accession process, providing negotiators with a realistic schedule for implementing EU standards, and working together to secure the necessary resources, both public (local, national and EU) and private.

7.2. Key aspects of the EU *acquis* and related issues for local government

7.2.1. Horizontal legislation

Horizontal legislation applies to several different areas of environmental policy (in contrast to sector-specific legislation, which applies only to a particular area, such as water or air). Rather than

regulating a specific area, these items of legislation are more procedural. They provide for methods and mechanisms aimed at improving decision-making and legislative development and implementation.

The following four Directives constitute the key elements of the *acquis* in this area as far as local authorities are concerned.

Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment

The Environmental Impact Assessment (EIA) Directive requires an environmental assessment to be carried out by the competent national authority for certain projects which are likely to have significant effects on the environment by virtue (among other things) of their nature, size or location. The assessment must be conducted before consent for development is given. This applies to projects proposed by public as well as private organisations or persons.

An assessment is obligatory for projects listed in Annex I of the Directive, which are considered as having significant effects on the environment. Other projects, listed in Annex II of the Directive, are not automatically assessed: member states may decide to subject them to an environmental impact assessment on a case-by-case basis or according to certain thresholds or criteria such as size, location (sensitive ecological areas in particular) and potential impact (surface affected, duration). The process of determining whether an environmental impact assessment is required for a project listed in Annex II is called screening.

The environmental impact assessment must identify the direct and indirect effects of a project on the following factors: human beings, fauna, flora, soil, water, air, climate, landscape, material assets and cultural heritage, as well as the interaction between these various elements.

The EIA Directive is currently being reviewed. The Commission adopted a proposal for a new Directive on 26 October 2012. The proposal is intended to lighten unnecessary administrative burdens and make it easier to assess potential impacts, without weakening existing environmental safeguards. According to the Commission, both the quality of the decision-making process and current levels of environmental protection will be improved, and businesses should enjoy a more harmonised regulatory framework. The changes are also forward-looking, and emerging challenges that are important to the EU as a whole in areas like resource efficiency, climate change, biodiversity and disaster prevention will now be reflected in the assessment process.

Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment

The Strategic Environmental Assessment (SEA) Directive establishes a framework for assessing the effects of certain plans and programmes on the environment. These include in particular local and regional plans for land use, energy, waste, transport and so forth. This directive extends the process for the assessment of projects developed in the EIA Directive and the Habitats Directive, and the close co-ordination of efforts under the SEA Directive with the work required under these other directives is desirable.

The SEA Directive aims for a 'high level of protection of the environment' and promotes the integration of environmental considerations into planning and programming by requiring that the environmental consequences of plans and programmes that are 'likely' to have significant environmental effects are identified and assessed during the preparation and before the adoption of plans and programmes (but not policies) covered by the directive.

The key element of the directive is the establishment of a procedure for carrying out an environmental assessment of plans and programmes that fall within its scope. An 'SEA assessment' takes place much earlier in the decision-making process than EIA and allows for the identification and possible prevention of adverse environmental impacts before the beginning of the formal decision-making process. It allows potentially adverse environmental effects to be identified already at the planning stage, long before EIAs for particular projects are required – for example, the impact of a transport plan on road use may be scrutinised long before projects to build new roads are launched. An SEA is required in order for a plan or programme to be given approval and is part of the national planning process.

The decision-making process at the planning level aims at a high level of transparency. The information contained within the environmental assessment and the information received during mandatory consultations with relevant environmental authorities and the public must be taken into consideration before the plan or programme is allowed to proceed. Thus, it must be ensured that public is informed about plans and programmes and the right to comment. Comments must be taken into account and, after the adoption of the plan or programme, the public must be informed about the decision and how it was made. Any likely significant transboundary effects of potential plans and programmes must also be taken into account by competent authorities. The potentially affected member state and its public are likewise to be informed before a decision is made. Their comments are also to be integrated into the relevant national decision-making process, and they should also be notified of the ultimate decision.

Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC

The three primary aims of the directive on public access to environmental information are:

- to guarantee the right of access to environmental information held by or for public authorities and to set out the basic terms and conditions of, and practical arrangements for, the exercise of this right
- to ensure that environmental information is progressively made available and disseminated to the public in order to achieve the widest possible systematic availability and dissemination to the public of environmental information
- to further the goals of contributing to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision making and, ultimately, to a better environment.

The public authorities must ensure that environmental information is systematically available and distributed to the public. Member states must ensure that public authorities make environmental information held by or for them available to any applicant, whether a natural or a legal person, on request and without the applicant having to state an interest.

The most demanding tasks related to the implementation of this directive are likely to be:

- organising the information services at local level (including public bodies and organisations) so as to provide an acceptable level of service to those wishing to access information (e.g. in terms of staffing, databases and reporting facilities), and publicising the services provided
- organising the production of state of the environment reports and other publications
- organising, and where appropriate formatting, the data (particularly monitoring-related data) for public access.

Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of drawing up certain plans and programmes relating to the environment and amending, with regard to public participation and access to justice, Council Directives 97/101/EC and 96/61/EC

The Public Participation Directive transposes the second pillar of the Aarhus Convention, which deals with public participation in environmental procedures. Hence, the primary aim of this directive is to provide for public participation in respect of drawing up certain plans and programmes relating to the environment.

7.2.2. Air quality

European legislation on air quality is built on certain key approaches and principles. One important approach is that the member states divide their territory into a number of zones and agglomerations. In these zones and agglomerations, member states should undertake assessments of air pollution levels using measurements, modelling and other empirical techniques. Where levels are elevated, member states should prepare an air quality plan or programme to ensure compliance with the limit value before the date when the limit value formally enters into force. In addition, information on air quality should be disseminated to the public.

While there are many different measures on air quality, two key directives are of particular relevance to the roles and responsibilities of authorities at local level.

Directive 2008/50/EC of the European Parliament and the Council of 21 May 2008 on ambient air quality and cleaner air for Europe

The Air Quality Directive focuses on the maintenance and improvement of air quality with respect to the following pollutants: sulphur dioxide, nitrogen dioxide, oxides of nitrogen, suspended particulate matter (PM10 and PM2.5), lead, ground level ozone, benzene and carbon monoxide.

Directive 2004/107/EC of the European Parliament and the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons

The Heavy Metals Directive regulates the remaining pollutants listed in Annex I of the Air Quality Framework Directive, i.e. mercury, cadmium, arsenic, nickel and polycyclic aromatic hydrocarbons. Thus, the Ambient Air Quality directive should be implemented together with the Heavy Metals directive as well as the Commission Implementing Decision 2011/850/EU on the reciprocal exchange of information and reporting on ambient air quality.

7.2.3. Waste management

EU policy on waste is implemented through a number of directives, regulations and decisions focusing on management, disposal options, separate waste streams, extended producer liability responsibility, and control of waste shipments for disposal or recovery operations.
The legislation on waste management promotes the following principles:

- Waste management hierarchy: Waste management strategies must aim primarily to prevent the generation of waste and to reduce its harmfulness. Where this is not possible, waste materials should be reused, recycled or recovered, or used as a source of energy. As a final resort, waste should be disposed of safely (e.g. by incineration or in landfill sites).
- Self-sufficiency at EU and, if possible, at member state level: Member states need to establish, in co-operation with other member states, an integrated and adequate network of waste disposal facilities.
- Best available technique not entailing excessive cost (BATNEEC): Emissions from installations to the environment should be reduced as much as possible and in the most economically efficient way.
- Proximity: Waste should be disposed of as close to the source as possible.
- Precautionary principle: The lack of full scientific certainty should not be used as an excuse for failing to act. Where there is a credible risk to the environment or human health from acting or not acting with regard to waste, that which serves to provide a cost-effective response to the risk identified should be pursued.
- Producer responsibility: Economic operators, and particularly manufacturers of products, have to be involved in the objective to close the life cycle of substances, components and products from their production throughout their useful life until they become waste.
- Polluter pays: Those responsible for generating or for the generation of waste, and consequent adverse effects on the environment, should be required to pay the costs of avoiding or alleviating those adverse consequences.

In December 2005 the Commission published a Communication on the Thematic Strategy on the prevention and recycling of waste[64]. Progress towards the objectives set out in the strategy has been reviewed in a 2011 Commission Report on the Thematic Strategy on waste prevention and recycling[65]. This includes a summary of the main actions taken by the Commission, the main available statistics on waste generation and management, a summary of the main forthcoming challenges and recommendations for future actions. The report on the Thematic Strategy includes several recommendations, for example proposing new initiatives favouring the use of economic instruments to implement the waste hierarchy. The Commission has accordingly launched a study on the use of economic instruments and their possible impact on the waste hierarchy.

64 COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS: Taking sustainable use of resources forward: A Thematic Strategy on the prevention and recycling of waste, COM (2005) 666, final.

65 REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on the Thematic Strategy on the Prevention and Recycling of Waste, COM(2011) 13, final.

Again, while EU legislation on waste management consists of many different measures in different sub-areas, three key measures of relevance to the roles and responsibilities of local authorities may be highlighted.

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives

In 2008 the waste management legislation underwent a major overhaul. The new Waste Framework Directive consolidates and repeals a number of earlier directives covering non-hazardous and hazardous waste and waste oils. It provides a framework for EU waste management that focuses on preventing or reducing the adverse impacts of the generation and management of waste, and improving efficiency of resource use in line with the waste management hierarchy. It clarifies key concepts such as the definitions of waste, recovery and disposal and also sets the conditions for by-product and end-of-waste status. The abandonment, dumping or uncontrolled disposal of waste is prohibited. Waste prevention, recycling and processing for re-use must be promoted. The directive aims to prevent waste generation and to encourage the use of waste as a resource (for example through measures aimed at source separation, collection and recycling of waste, as called for by the Sixth Community Environmental Action Programme).

Effective implementation of the Waste Framework Directive depends on the proper implementation of other legal instruments. Thus, while for reasons of space not all items of the *acquis* are listed here, all the legislation in the waste sector should be borne in mind when implementing the Waste Framework Directive (there are measures, for example, on shipments of waste, incineration, disposal of electrical and electronic waste, motor vehicles, industrial emissions and more, which may also be relevant for local authorities).

Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste

The Landfill Directive provides for measures, procedures and guidance to prevent or reduce the negative effects on the environment, and the risks to human health, from the landfilling of waste.

The directive lays down a standard waste acceptance procedure so as to avoid any risks:

- waste must be treated before being landfilled
- 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.

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.

Importantly, the polluter pays principle is given effect in two significant ways: by requiring the operator of the landfill to provide financial security for the lifetime of operations at and in relation to the landfill, and by ensuring that the operator's charges cover full costs in relation to the setting up, running, closure and aftercare of the landfill site.

European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste

Directive 94/62/EC aims to harmonise national measures on the management of packaging and packaging waste, in order to prevent or minimise any environmental impacts of packaging and packaging waste and to avoid distortions of competition within the internal market. This directive covers all packaging placed on the European market and all packaging waste, whether it is used or released at industrial, commercial, office, shop, service, household or any other level, regardless of the material used.

This directive has been amended twice, first by Directive 2004/12/EC and later by Directive 2005/20/EC. Directive 2004/12/EC introduces substantial amendments to Directive 94/62. Directive 2005/20/EC amends Article 6 of Directive 94/62/EC by adding a paragraph allowing the new member states transitional periods for attaining the energy recovery and recycling targets for 31 December 2008. The transitional periods range from 31 December 2012 to 2015.

The directive lays down measures aimed, firstly, at preventing the production of packaging

waste and, secondly, at increasing the reuse, recovery and recycling of such waste. The second element is of particular relevance for local authorities.

7.2.4. Water protection

Water is considered as one of the most comprehensively regulated areas of EU environmental legislation. EU provisions govern basically every kind of water body both in terms of maintaining sufficiently good water status quality and in terms of restricting and controlling activities that can adversely affect water bodies.

The new European water policy comprises the innovative Water Framework Directive (2000/60/EC) and the Floods Directive (2007/60/EC), introducing key principles in water quality management. This core of water quality legislation was further simplified and streamlined through Directive 2008/105/EC, which lays down environmental quality standards for priority substances and certain other pollutants as provided for in Article 16 of Directive 2000/60/EC, which consolidates a number of individual Directives focusing on certain substances.

Four directives in this field are of particular relevance for the roles and responsibilities of authorities at local level.

Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy

The Water Framework Directive reflects the shift in EU water policy and formulates the new approach through the following key objectives:

- the development of an integrated EU policy on and for the long-term sustainable use of water, and its application in accordance with the principle of subsidiarity
- expanding the scope of water protection to all waters: surface waters, including coastal waters, and groundwater
- achieving 'good status' for all waters by a certain deadline, and preserving such status where it already exists
- water management based on river basins, with a 'combined approach' of emission limit values and quality standards, with appropriate co-ordination provisions for international river basin districts where river basins are located in more than one member state and/or also involve territory of non-member states
- setting prices for water use taking into account the principle of cost recovery and in accordance with the polluter pays principle
- getting citizens involved more closely
- streamlining legislation.

Besides the Water Framework Directive, which provides a managerial framework for water protection and legislation, a wide range of other directives and Council decisions regulate different aspects of water management.

Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks

Directive 2007/60/EC aims to establish a common framework for assessing and reducing the risk that floods pose to human health, the environment, property and economic activity. The directive covers all types of floods, both along rivers and in coastal areas. Other risks, such as urban floods and sewer floods, must also be taken into account. The proposed prevention and management measures are organised by river basin districts (which may cover several river basins) as established by the Water Framework Directive. The measures include the preliminary assessment of risks and the establishment of maps of areas at risk and flood management plans.

Council Directive 91/271/EEC concerning urban waste water treatment

The Urban Waste Water Treatment Directive concerns the collection, treatment and discharge of urban waste water from agglomerations and the treatment and discharge of biodegradable waste water from certain industrial sectors. The directive establishes standards and compliance mechanisms pertaining to the collection of and mandating the treatment of waste water resulting from domestic sewage, industrial waste water and urban surface run-off. It includes the provision that the resulting sludge is disposed of safely in an environmentally acceptable manner.

The Directive establishes a timetable for the provision of collecting systems for urban waste water (UWW) depending on the size and location of the agglomeration. Collecting systems must be supplied for all agglomerations with a population equivalent (PE) of 2,000 or greater. The collecting systems must take into account the requirements

for waste water treatment. Their design, construction and maintenance must use the best technical knowledge not entailing excessive costs regarding the volume and characteristics of the UWW, the prevention of leaks and the limitation of pollution of receiving waters due to storm water overflows.

Waste water treatment plants must be designed or modified so that representative samples of the incoming waste water and of the treated effluent can be obtained before discharge to receiving waters. They must be designed, constructed, operated and maintained so as to ensure sufficient performance under all normal climatic conditions. The points of discharge must be chosen, as far as possible, so as to minimise the effects on the receiving water. In terms of treatment standards, secondary treatment is the general rule. Tertiary treatment is required in sensitive areas. A water body must be identified as a sensitive area in accordance with conditions set in Annex IIA. The Directive sets out a timetable by which agglomerations of different sizes and types of location must comply with these treatment requirements. The designation of sensitive areas must be reviewed every four years.

It should be noted here that implementation of the Urban Waste Water Treatment Directive is recognised as one of the most challenging and expensive tasks throughout the range of EU environmental legislation. Careful technical and financial assessment is essential when it comes to putting in place the necessary infrastructure (sewerage networks, waste water treatment plants).

Council Directive 98/83/EC on the quality of water intended for human consumption

The European Union has a history of over 30 years of drinking water policy. This policy ensures that water intended for human consumption can be consumed safely on a life-long basis, and this represents a high level of health protection. The main pillars of the policy are to:

- ensure that drinking water quality is controlled through standards based on the latest scientific evidence
- secure an efficient and effective monitoring, assessment and enforcement of drinking water quality
- provide the consumers with adequate, timely and appropriately information
- contribute to the broader EU water and health policy.

The measures required for the implementation and operation of this directive in candidate countries should be effected bearing in mind the extensive provisions of the Water Framework Directive (2000/60/EC), which has altered the legislative framework generally for EU water-related legislation and provides an altered structure for the practical application of this directive (specific requirements for monitoring, reporting and information). It is recommended that any further implementation of this directive should take place after careful consideration of the Water Framework Directive.

7.3. Comparison with Serbian legislation and practice

It is safe to say that Serbian local authorities will face an enormous challenge when it comes to implementing the environmental *acquis*. A questionnaire answered by 58 Serbian local authorities shows that on average 1–2.5% of the municipal budget is spent on environmental actions and about 1–3% of employees directly perform tasks in the field of environmental protection. Allocations in the local budget vary to a great extent. The largest contribution to the sector at local government level is project financing through government grants or EU financing. More than 40% of the surveyed local authorities state that environmental monitoring is not performed and two-thirds have not prepared any aggregated data on the state of the environment for their own needs in the previous two years.

According to the information provided in the EU Commission's (2012) progress report for Serbia, some progress has been made with the transposition of horizontal directives. Serbia adopted its National Environmental Approximation Strategy in October 2011. A Strategy for the Implementation of the Aarhus Convention was adopted in December 2011. Consequently, it may be assumed that Serbia is well on the way to compliance with the provisions of Directive 2003/4/EC on environmental information and Directive 2003/35/EC on public participation in respect of drawing up certain plans and programmes relating to the environment is already high. The Environmental Impact Assessment Directive (2011/92/EU) and Strategic Environmental Assessment Directive (2001/42/EC) have been reported as fully trans-

posed by provisions of the Law on Environmental Impact Assessment (*OG of RS*, No. 135/04, 36/09) and Law on Strategic Environmental Assessment (*OG of RS*, No. 135/04, 88/10) respectively.

Transposition of the EU air quality legislation, namely the Air Quality Directive and Heavy Metals Directive is well advanced. The majority of the provisions are reported as fully transposed into the national legislation through provisions of the Law on Air Protection (*OG of RS*, No. 36/09 and 10/13), Regulation on monitoring conditions and air quality standards (*OG of RS*, No. 11/10 and 75/10), Rulebook on the content of air quality plans (*OG of RS*, No. 21/10) and the Rulebook on the content of short-term action plans (*OG of RS*, No. 65/10). The following acts are also relevant to transposition of the air quality legislation: Regulation on determining air quality programme in the national air quality monitoring network (*OG of RS*, No. 58/11), Regulation on determination of zones and agglomeration (*OG of RS*, No. 58/11 and 98/12), Regulation on determining list of zones and agglomerations on the territory of RS according to air quality categories for 2011 (*OG of RS*, No. 124/12), Rulebook on conditions for issuing licences to operators for air quality monitoring and/or licences for monitoring emissions from stationary sources (*OG of RS*, No. 16/12) and Rulebook on conditions for issuing licences for air quality monitoring and licences for monitoring emissions from stationary sources (*OG of RS*, No. 1/12).

Transposition of the Waste Framework Directive is still not complete. Most of the directive's provisions were transposed in 2010 by adoption of the following legal acts: Law on waste management (*OG of RS*, No. 36/09, 88/10), Regulation on categories on waste (*OG of RS*, No. 56/10), Regulation on content, method and form of the register of issued permits (*OG of RS* No. 95/10), Regulation on storage, packaging and labelling of hazardous wastes (*OG of RS* No. 92/10), Regulation on management waste oils (*OG of RS* No. 71/10) and Regulation on the landfill of waste (*OG of RS* No. 92/10). However, key provisions of the directive concerning by-products (Art. 5), end of waste-status (Art. 6), re-use and recycling (Art. 11), hazardous waste (Arts. 18 & 20), bio-waste (Art. 22), waste management plans and waste prevention programmes (Arts. 28 & 29) still remain to be transposed. As regards the transposition of the Packaging Waste Directive (94/62/EC) full transposition has been achieved by adoption of the Law on package and packaging waste (*OG of RS*, No. 36/09). The Landfill Directive (1999/31/EC) has also been fully transposed via provisions of the Law on waste management (*OG of RS*, No. 36/09, 88/10) and the Regulation on the landfill of waste (*OG of RS* No. 92/10).

Transposition of the EU water protection legislation has been partially achieved. The Water Law (*OG of RS*, No. 30/10) is the main legal instrument, transposing the majority of the Water Framework Directive's provisions. Also of relevance to transposition are: Regulation on parameters on the ecological and chemical status of surface water and quantitative and chemical status of ground waters (*OG of RS*, No. 74/11), Regulation on limit values of priority and priority hazardous substances polluting surface water and deadlines for reaching of the values (*OG of RS*, No. 35/11) and Regulation on limit values of pollutants emission into water and deadlines for reaching the values (*OG of RS*, No. 67/11). Gaps in transposition are noted in respect of provisions on combined approach and water pricing policy. Full transposition of the Urban Waste Water Treatment has not been achieved yet. Provisions of the Water Law (*OG of RS*, No. 30/10) and the Regulation on limit values of pollutants emission into water and deadlines for reaching the values (*OG of RS*, No.67/11) have partially transposed directive's requirements. Provisions concerning the obligation to establish systems for collection of urban waste water for the agglomerations with a population equivalent of more than 2,000 and to ensure that waste water treatment is provided for all agglomerations at the level specified by the directive are still not transposed. Gaps in transposition are also noted in respect of provisions concerning prior regulation or authorisation for discharges of urban waste water treatment plants as well as of monitoring and reporting requirements. Only partial transposition has been achieved in respect of Drinking Water Directive. With relevance for the transposition are provisions of the Water Law (*OG of RS*, No. 30/10), Law on Food Safety (*OG of RS* No. 41/09) and the Rulebook on hygiene of drinking water (*OG of RS* No. 42/98 and 44/99).

In conclusion, formal transposition of key aspects of the environmental *acquis* for local authorities is reasonably well advanced and progress continues. However, there are important gaps, some of which concern those aspects of the *acquis* that will be most costly in terms of up-front

investment (such as urban waste water treatment).

A constant theme in the Commission's (2012) progress report is that implementation needs to be stepped up. While Serbian legislation has been fully aligned with the EIA directive, for example, implementation needs to be improved, 'in particular the public consultation process and the quality of the dialogue with the NGOs'. And overall:

> Significant further efforts are needed in order to implement the national legislation, especially in the areas of water management, industrial pollution control and risk management, nature protection and air quality. The strengthening of the administrative capacity should remain a priority.

The remainder of this section therefore covers the key issues that local authorities face or will face when it comes to implementing the (transposed) *acquis* in the areas outlined above.

Horizontal legislation

Since the horizontal legislation discussed in this chapter is concerned with administrative procedure, such as permits (EIA Directive), approvals at the planning level (SEA Directive), collection, processing and sharing of environmental data, and ensuring public participation in decision-making, the key activities needed to implement these directives on local level will focus on institutional issues such as:

- assessment of existing arrangements for permit procedures, planning and programme approvals and the collection and dissemination of environmental data to identify whether existing arrangements are compatible with the requirements of the directives
- reviewing and improving administrative procedures, in particular concerning public participation in relation to development consent (EIA Directive) and approval of plans and programmes (SEA Directive)
- reviewing arrangements to allow public access to information
- financing.

It is clear therefore that a strong and well-equipped administration at local as well as national level is imperative for the implementation of the horizontal legislation. Thus, the capacities of local authorities should be strengthened to ensure that requirements concerning permits, planning and availability of environmental information and public participation in environmental decision-making procedures are complied with.

Air quality

Implementation of the Air Quality Directive together with the Heavy Metals Directive represents a major challenge for the candidate countries since the overall cost for implementation will be relatively high. The greater part of implementation costs will be borne by source operators, who will need to pay for emission abatement equipment, whether in upgrading existing facilities or installing new ones. Nevertheless, setting up the network of air quality monitoring stations and associated quality assurance equipment for assessment and classification will require capital investments both by the national and local competent authorities.

EU legislation does not stipulate the division of powers and responsibilities between national, regional and local administration. However, it is logical and practical for some functions (for example, drafting air quality plans, drafting transposing legislation, setting technical standards, and introducing penalties for non-compliance) to be undertaken at national level, and others (for example, inspection of small air pollution sources, verification of compliance with technical standards and monitoring of local air monitoring stations) to be undertaken at local level.

The role of local government in the context of air quality management is important for two reasons. First, action by the central government would not in itself be sufficient to implement EU requirements on air quality since some air quality issues are most easily and efficiently detected and resolved at local level. The same goes for the efficient monitoring and supervision of polluting activities from fixed sources. Secondly, planning and implementation of air quality management legislation will require coordination between the key players such as government, competent authorities, regional and local authorities, private entities (e.g. industry, electricity producers) and other relevant stakeholders which will be directly or indirectly involved in the implementation and application of the air quality legislation. Thus, efficient and timely communications are important for effective implementation of the legislation. The Serbian Law on Air Protection (OG of RS, No. 36/09 and 10/13) has determined the roles and responsibilities of the local self-government units.

Hence, in the context of air quality management local authorities have the following roles:

- establishing local networks of measurement stations in order to monitor the air quality, as well as drawing up air quality monitoring programmes
- making decisions about special purpose measurement
- submitting data on the results of measurements to the Environmental Protection Agency
- informing the public in event that information thresholds, or the specific alert threshold established by this Law, are exceeded
- drawing up air quality plans
- drawing up short-term action plans, including informing the public pursuant to Art. 35 of the Law on Air Protection
- inspection oversight of the implementation of air protection measures against the pollution in facilities for which the competent authority of the local self-government unit issues permits for construction and use.

Implementation of the air quality legislation will require staff training. Without sufficient and suitably trained staff, systems for air quality monitoring, modelling, management, planning, regulation and enforcement cannot be effectively implemented. It is therefore important to ensure that adequate budgets are provided to enable the responsible institutions to perform their functions effectively. An assessment of training needs should be carried out to ensure that, once staff are recruited and working, any deficiencies in skills can be remedied within a reasonable period of time. Depending on the responsibilities of individual local authorities, human resources are required for:

- developing and implementing air quality plans
- ensuring public information and participation in developing air quality plans
- ensuring that public is informed in cases of where alert thresholds and information thresholds are exceeded
- supervision, monitoring and inspection of facilities and activities that have a potential for pollutant emissions to air
- initiating and pursuing enforcement actions
- data collection, analysis and reporting.

Waste management

Enacting laws on waste management is not in itself sufficient to ensure that the objectives of those laws are met in practice. In order to be effective, legal measures must be properly administered and enforced, which requires that adequate systems, procedures and resources are deployed for this purpose. In this context, the role of regional and local government is important for several reasons. Firstly, action by central government would not in itself be sufficient to implement the waste directives. Secondly, waste generation and disposal occurs at the regional/local level, requiring tools for planning, regulation and monitoring. Accordingly, responsibilities for waste management are predominantly devolved to regional and local authorities. These responsibilities may include approval of sites for waste management facilities and the provision of services (collection, transportation, treatment, recovery and disposal) for municipal waste or regulatory functions. Local authorities would also be responsible for issuing by-laws relating to waste management which support the implementation of national legislation – for example, rules relating to when and how waste is collected. Thus, the regulatory function at local level consists of three primary tasks:

- issuing licences or permits for waste management facilities and activities
- monitoring, supervision and inspection to ensure that licence or permit conditions are being adhered to
- taking enforcement action in case of non-compliance with permit conditions or other provisions of EU waste legislation (as transposed into national system), which should entail effective, dissuasive and proportionate sanctions (normally fines).

In addition, achieving compliance with the EU's principles of waste management will require a major change in values and attitudes to the environment by all levels of government, industry and consumers. Thus, it is recommended to develop a programme for education and awareness-raising. The role of local authorities will be crucial in improving public perceptions and attitudes towards waste management generally. The main challenges would be to address public concerns and expectations related to the selection and location of waste management facilities. Furthermore, a shift in public attitudes towards the increased costs of improved waste management system is essential. However, these unpopular issues are often ignored by local authorities, to the detriment of the

implementation of the waste management rules in general.

The roles of regional and local government in waste management may also vary according to economies of scale and waste type. In this case, inter-municipal co-operation can be very beneficial in achieving groupings with enough waste to make suitable facilities affordable. This regional approach can also be appropriate for hazardous waste disposal. If the regional approach is to be promoted, the existing policy, legal and administrative framework governing local government bodies needs to be reviewed to ensure that there is an adequate basis for inter-municipal co-operation. In this context it is necessary to examine carefully the nature of any forms of voluntary agreements, joint ventures or associations between local government bodies to ensure that issues such as resource sharing and liability are addressed appropriately.

The main challenges in implementation of EU waste management legislation can be summarised as follows:

- Developing and approving waste management plans.
- Ensuring an adequate network of safe and legal waste disposal and recovery facilities. Matching the capacity of waste infrastructure to the volume of waste generated is fundamental to good waste management. Waste management plans can help ensure the necessary capacity, but only if they are effectively implemented.
- Reducing and better managing certain waste streams. The achievement of certain EU waste reduction and management goals, such as the diversion of biodegradable waste from landfills and the collection of end-of-life vehicles and waste electrical and electronic equipment (WEEE), also depends on adequate forward planning and the development of the necessary organisational arrangements and recovery facilities.
- Providing permits for new infrastructure and facilities and inspection and supervision of all existing ones.
- Combating illegal waste disposal. Tackling the use of illegal landfills requires strategic action across several fronts to comply with the Waste Framework Directive and the Landfill Directive: investments in legal facilities; better systems of national detection, enforcement and deterrence; and adequate site clean-up.

The Serbian Law on waste management has determined the responsibilities of local governments as regards implementation of the waste management legislation. Thus, each local authority is responsible for carrying out the following activities:

- Adoption of a local waste management plan defining tasks in managing waste on its territory in accordance with the Strategy for waste management, and ensuring that preconditions for the implementation of this plan have been met.
- Regulation, organisation and implementation of the management process regarding communal (i.e. inactive and non-hazardous) waste on its territory in accordance with the law; provision and equipment of centres for the disposal of waste that cannot be disposed of in containers for communal waste (bulky and other waste); regulation of the organisation, selection and collection of waste intended for recycling.
- Regulation of the procedure for collection of charges in areas of communal waste management, i.e. municipal and non hazardous waste, in accordance with the law.
- Issuing licences, approvals and other acts in accordance with the Law on waste management, maintaining evidence and providing the ministry with relevant data; issuing licenses for the collection, transport, storage, treatment and disposal of inactive and non hazardous waste on their territories (delegated competencies).
- Providing opinions at the request of the ministry or respective body of an autonomous province on the licence-issuing procedure in accordance with the Law on waste management.
- Performing supervision and control of waste treatment, all in accordance with the Law on waste management.
- Discharging other duties where provided by law.

Activities related to municipal and non-hazardous waste, as well as activities concerning licensing, are performed as delegated activities and are subject to direct control by the Ministry of Energy, Development and Environmental Protection.

Relevant national legislation, i.e. the Law on waste management, has recognised the benefits of and thus encouraged inter-municipal cooperation. Hence, one or more local authorities may

decide on a common location for the construction and operation of a facility for storage, treatment and disposal of waste on their territories, in accordance with conditions prescribed by law and with the joint decision of local elected assemblies on the location of such a facility. If a facility for the treatment and disposal of hazardous waste is constructed, the ministry in charge decides on its location in accordance with the law and the previously obtained opinions of local authorities or autonomous provinces for facilities constructed on their territories. If local authorities cannot reach a joint decision on the location of a waste management facility, the government, on the proposal of the ministry or respective body of an autonomous province, shall decide. In this context it is necessary to examine carefully the possible legal formats for establishing inter-municipal cooperation in waste management to ensure that issues such as resource sharing and liability are addressed appropriately.

Water

The Water Framework Directive and the Floods Directive are to a large extent based on a 'decentralised' concept of river basin management and encourage the involvement of local people as much as possible in the whole planning process. In this context the role of regional or local governments is essential in the implementation of water protection legislation. The Water Framework Directive and Floods Directive will require the cooperation of regional and local authorities in developing operational and strategic objectives that are to some extent also usage-related (e.g. waters for abstraction of drinking water, waters for bathing). Measures to meet prescribed water quality standards and abstraction limits will in any case require local action. Since provision of water, sewerage and waste management services are the responsibility of local authorities, they will be involved in ensuring that drinking water is safe and that human waste products are disposed of in a satisfactory way so as to minimise public health risks and/or other harmful effects on water resources. Local administrations may be responsible for, and be funded to construct, water and waste water treatment plants, water mains and sewerage networks. According to the Water Law (*OG of RS*, No. 30/10), the competencies of local self-government units consist of the following:

- Management of and responsibility for proper utilisation, maintenance and protection of water structures used for water regulation and protection from floods from second-class waters, as well as publicly owned facilities for protection from water and torrent perils.
- Protection from adverse water impact.
- Organisation and implementation of protection from floods and adoption of operational plans for protection from floods for second-class waters.
- Establishing erosion areas, formulating conditions for the use of such areas and performing works and measures for protection from erosion and torrents.
- Execution of preventive measures and protection works to evade and remove adverse impacts caused by erosion and torrents.
- Securing funds jointly with the Republic of Serbia for the construction and execution of works for protection from adverse effects of erosion and torrents, if torrent streams and strong erosion processes threaten human settlements, industrial facilities, local and regional roads and melioration systems or if they spread on to the territories belonging to two or more units of local self governments.
- Establishing locations for and formulating ways of water use for recreational purposes, having previously obtained the opinion of a public water management company.
- Submission of an application for establishing sanitary protection zones, if such a zone has been envisaged on the local territory in a relevant study.
- Taking decisions on the release of waste waters into public sewage.
- Issuing water acts on the local territory in order to ensure the unity of the water regime and the implementation of water management.
- Imposing water conditions in the process of preparing technical designs for construction or reconstruction of buildings, execution of works and preparation of planning documents for the local territory.
- Taking decisions on the transfer of rights acquired on the basis of water approval issued for the exploitation of water deposits.
- Issuing water directives to persons to whom a water approval has previously been issued.
- Keeping a water record in respect of the water acts issued and submitting data from these records to the ministry in charge.

- Issuing approval to connect to a rural water supply line.
- Repairing damage in case of deterioration of the water regime or erosion in an erosion area caused by the actions of legal entities or individuals, if they fail to do so.
- Nominating a representative for the National Conference for Waters, the goal of which is to promote public influence in the water management process.
- Management and maintenance of regional and multi-purpose hydro systems used for serving demands for water (water supply, irrigation, water protection, protection from adverse impact of waters) on the territory on two or more units of local self-governments.

Since the transposition of the EU water protection legislation has not been completed, the responsibilities of local authorities are still not clearly defined by the national legislation. Thus, it is necessary to decide on the distribution of responsibilities between the national and local authorities in terms of implementation of water protection legislation, which may include activities related to planning, regulation, monitoring, consultation and reporting. The 'decentralised' nature of the Water Framework Directive and the Floods Directive implies that local authorities will be involved in planning and ensuring consultation with the public when developing river basin management plans. Furthermore, it may be assumed that the responsibilities of local authorities will encompass construction of publicly owned sewer network and treatment plants, which will present a major challenge in terms of financing. Thus, institutional developments should be carefully planned in order to ensure appropriate application of the water protection legislation.

7.4. Capacity to affect the outcome

7.4.1. Influence at the EU level or through the accession negotiations

An underlying principle of the negotiations is that countries must fully transpose and implement the EU legislation by the time of accession. However, there is significant scope for transitional measures in the environment chapter, in particular for investment-heavy directives (mainly in the fields of waste, water, industrial pollution and air quality), provided that derogations are limited in time and scope and do not create distortion of competition for the EU single market. Transition periods may only be granted on the basis of detailed justification of the needs, and on the basis of realistic implementation plans specifying the steps that will be taken to ensure full compliance with the target legislation by the end of the transition period. Transitional periods are not granted for horizontal legislation (environmental impact assessment, strategic environmental assessment, access to information, etc.), nature legislation and framework legislation (waste framework legislation, water framework legislation, etc.). From a local government perspective, achieving realistic transitional periods is an important issue, since local authorities may find themselves in the firing line if they are unable to deliver agreed improvements to infrastructure and standards on time. Based on Croatia's recent experience, the key elements of the negotiation process, which also represent the main challenges for candidate countries are summarised below:

Legal transposition

A significant amount of legislation still needs to be transposed by the date of accession. In the process of alignment of the national legal system priority should be given to horizontal and framework legislation, since logic dictates that the framework must first be in place before specific acts can be adopted[66]. Also, the inter-related nature of environmental legislation presents additional challenges. It is important to ensure a high level of coherence between legal acts regulating different areas of the environmental *acquis*. The key issue here is extensive knowledge and understanding of the EU environmental *acquis*.

66 It may also be argued that horizontal measures should take priority because transition periods for these are not generally granted. However, even where transition periods are available in the case of specific acts, these generally refer to particular deadlines within a directive, not to transposition of the whole directive. Other elements may still apply from the date of accession. In any event, it will be in local government's interest to focus on exactly what will be required of them after transition periods expire.

Strengthening of administrative capacity at national and local level

Relevant institutions at national, regional and local level should be able to absorb an increased number of tasks related to the approximation process. Furthermore, overall coordination between different institutions responsible for the environmental *acquis* should be ensured.

Transitional periods and implementation plans

Decisions on the transitional periods required should be reached very early in the process. These must be accompanied with an implementation plan indicating a detailed timetable for implementation and institutional development and, most importantly, a financial plan.

Chapter 27 of the *acquis* on Environment is the second largest and probably the most complex and costly chapter, and due attention must therefore be given to possible derogations and realistic transition periods. Recent experience from Croatia shows that, depending on the specific part of the environmental *acquis*, transition periods may vary from two up to 12 years. Special attention should be given to the following aspects of the environmental *acquis*:

- setting of exposure reduction targets and an average exposure indicator for air pollutants
- bringing waste landfills into compliance with the *acquis* requirements
- reduction of the amount of biodegradable waste going into landfills
- aligning waste water treatment with the *acquis* requirements
- achieving certain standards for drinking water
- full implementation of integrated pollution prevention and control (IPPC)
- emissions of volatile organic compounds.

The experience of countries in the region that have gone through the negotiation process supports this position. The Bulgarian case shows for example that setting up unrealistic targets for waste water treatment can result in penalties and fines for a member state that fails to fulfil the negotiated terms. Also, recent experience from Croatia shows that, depending on the specific part of the environmental *acquis*, transition periods may vary from two to 12 years.

7.4.2. Influence at the national/provincial level, including on transposition of legislation

National arrangements for implementation of the environmental legislation will be crucial for local authorities. As transposition of the *acquis* is ongoing and well advanced in some areas, it is urgent to involve both local governments and civil society in the process. This could be done through active usage of the Working Group organised by the Ministry of Energy, Development and Environmental Protection in which SCTM has been invited to participate. Financial, organisational and capacity implications of the transposition in relation to the current level of implementation as well as planning and financing of capacity development of local governments are key issues. Though perhaps less of a risk than in other areas of the *acquis*, it is nonetheless important to make sure that national government does not go further than required in setting targets and norms.

The above-mentioned Working Group consists of representatives of the Serbian Government, i.e. different ministries and governmental institutions and agencies that are in one way or another involved in environmental protection issues, as well as of representatives of other relevant organisations such as the Serbian Chamber of Commerce and SCTM. It will be used to prepare the negotiating position for chapter 27. So far the members of Working Group have participated in a training workshop on the preparation of the negotiating position.

The implementation of EU environmental legislation will require a major overhaul of all aspects of environmental protection, including strengthening of institutional capacities, better planning and project preparation at all levels of government. Thus, an important aspect of ensuring effective implementation of EU environmental *acquis* is promoting inter-municipal cooperation. Environmental problems do not stop at the borders of municipalities and towns. Coordinated and strong action is required to combat environmental challenges, especially in the waste and water protection sectors.

For example, in the waste management sector it may be assumed that most towns and municipalities will not be able through their own resources to meet the objectives set by EU legislation on waste management, or to attract external funding for planning, preparation and financing

of upgraded facilities in the near future. Generally speaking, establishing inter-municipal cooperation will be required if towns and municipalities are to be successful in the transformation from the current state of waste management to municipal waste management in accordance with EU standards. In this context it is recommended to discuss the content of such inter-municipal cooperation and the form and format under which cooperation is to be formalised and implemented.

7.4.3. Preparations at local level including support from SCTM

Based on a survey of 58 local authorities and in-depth interviews in 26 municipalities, SCTM is preparing an assistance plan to support local governments in the area of environmental legislation. Training courses at an overall sector level will be provided along with guidelines, manuals, municipal toolkits, model municipal documents, etc. However, SCTM alone does not have the financial capacity to support all 168 municipalities to the extent required and the plan should therefore be discussed, coordinated and negotiated with government initiatives and other local and international stakeholders. For each of the investment-heavy directives, in-depth assessments of capacity training needs with attached government funding will be required.

Priority is likely to be given to horizontal legislation as the role of regional and local government in implementing horizontal legislation especially as regards the permitting and dissemination of environmental information is very important and it is an area where transitional periods are not granted. Experience in member states suggests that permission for land-use development and the dissemination of environmental information is best organised at the regional or local level. Based on the assessment of the transposition status of horizontal legislation it may be assumed that the responsibilities of local authorities in the context of implementation of horizontal legislation are reasonably well defined. However, as noted in section 7.3, the EU Commission's progress report has underlined a number of implementation gaps in this field, including with the EIA directive, especially in respect of ensuring public participation.

Within the scope of the accession process SCTM should support local authorities in meeting EU standards in the field of environmental protection as well as working together with them to recognise the importance of climate change and creating policies that improve the situation in this area. This should be done through policy dialogue, training courses, informative actions, awareness raising campaigns and similar activities.

7.5. Indicators of potential outcome

The Republic of Serbia is on its way towards becoming an EU member state. In this process, adoption of the EU environmental *acquis* may represent an additional burden for the country due to its volume and complexity and to the high costs of compliance. Experience from previous enlargements has shown that the accession process has elevated the importance of environmental protection on the national agenda. However, the demand for rapid economic growth can jeopardise a country's commitment to ensuring high EU environmental standards. Economic constraints may also affect the country's willingness to expand and increase the capacity of the environmental administration at all levels. Having in mind the widely recognised concept of sustainable development, the need to ensure a high level of environmental protection should always prevail. In the long term, the benefits of compliance with the environmental *acquis* will be far greater than if a traditional 'business-as-usual' approach is followed, resulting in increased and irreversible damage to the environment followed by high economic, health and social costs. High environmental standards may also promote innovation and business opportunities, which will have a positive impact on local development through attracting investment. The end result of environmental investments is improved citizen health (which also affects productivity positively), increased employment and development of new and/or existing industries. Furthermore, a healthy environment is essential to citizens' long-term prosperity and quality of life.

In this context, it is essential to ensure commitment to the accession process both at national and at local level. Institutional reforms and improved cooperation at all levels are of the utmost importance in order to ensure future investments and to receive substantial pre-accession assistance from the EU.

As already stated, the accession process has huge consequences for local authorities, since it is at the local level that the impact of accession

is most directly felt. Hence, timely preparation of local authorities is strongly recommended in order to enable them to participate in the accession process as equal partners. In this process it is necessary to ensure:

- A high level of knowledge and understanding of the EU environmental *acquis*. This in turn will have a positive impact on the capacity of local authorities to absorb available EU funds;
- Clearly defined responsibilities, at both national and local level, as regards implementation of the environmental *acquis*, including the deadlines for achieving the targets; Administrative supervision should be strengthened in this regard;
- Conditions that allow the public to play a significant role in environmental protection. This may include activities that facilitate public access to information, public awareness campaigns concerning environmentally responsible behaviour such as separate waste collection, reliable public transport, etc. In this context, non-governmental organisations can play an important role in building public awareness on environmental issues.

The impact of accession in this area on local authorities will depend crucially on how they and the national authorities respond to the challenges outlined in this chapter. Perhaps the most critical of these is ensuring a realistic timetable and sufficient finance for the substantial upgrades to infrastructure and services that accession will sooner or later necessitate.

In the worst-case scenario, local authorities find themselves burdened with additional responsibilities but without the means to fulfil them. Present funding shortages and the lack of trained local people are examples that confirm that this is a real risk. In the best-case scenario, SCTM could serve to channel detailed local knowledge on the actual state of infrastructure, financial scope for upgrades, and so forth, thereby strengthening national representatives' hand in the accession negotiations and helping to guard against unrealistic commitments. SCTM could also work together with the national authorities to create a regulatory and fiscal environment that is as favourable as possible when it comes to securing the necessary public (local, national and EU) and private funds.

Conclusions

THERE CAN BE NO DOUBT whatsoever that EU accession has had and will continue to have a major impact on local authorities. Moreover, the scale of this impact has often been underestimated in previous accessions. For example, municipalities in Sweden knew that EU public procurement rules would affect them, but they could not have predicted that the number of court cases due to appeals by losing bidders would increase by a hundredfold. In some more recent accessions, national negotiators have signed up to ambitious deadlines for upgrading water and waste infrastructure without realising the full extent of the implications for local budgets. There have also been unexpected indirect impacts, even in policy areas only tangentially addressed by EU legislation, such as town planning or local health services.

Accession entails both opportunities and additional responsibilities for local authorities. The opportunities include greater transparency and competition, access to EU funds, and the chance to embrace EU standards in areas such as working conditions and environmental protection. Additional responsibilities include the investments that will be needed to upgrade infrastructure and meet higher standards, and the extra administration required to implement EU legislation and policy in several fields.

But these opportunities and responsibilities are not necessarily good or bad things in themselves. Rural development funding, for instance, looks like a clear benefit, but may turn out to be of little interest to local administrations if they lack the know-how required to take part in programmes. Energy efficiency standards might seem a burden at first sight, but municipalities with sufficient cash flow often find that the necessary investments pay for themselves, leading to financial as well as environmental gains. Thus the overall impact of accession depends not on the balance of opportunities and responsibilities, but on whether local authorities have the capacity and resources to benefit from and fulfil these opportunities and responsibilities.

If they do, the impact of EU accession in terms of local authorities' ability to meet the needs of their citizens may be highly positive. This might seem paradoxical at first sight – after all, EU membership is usually seen as an upward transfer of sovereignty, from the national to the supranational level. But it is at the local level where much of EU legislation and policy is actually implemented.

If local authorities lack adequate influence, capacity and resources, accession is likely to be more problematic. Instances of this are found throughout the report – annulment of local property transactions on state aid grounds, repayment of EU structural funds owing to irregularities, fines for failure to upgrade local water treatment plants, and so forth. This is ultimately an issue for local democracy. Even if such problems are only temporary in nature, local authorities that are unable to cope with the demands of accession may see competences transferred to regional bodies or national ministries.

Fortunately, these risks can be minimised, as detailed for each policy area in the individual chapters above. Generally speaking:

- It is essential for the government to take local implementation of the EU *acquis* into account when drafting Serbia's negotiating position, especially on key chapters such as environment or structural instruments. Local input can help to strengthen the negotiating position for the benefit of the country as a whole, by ensuring for example that commitments on waste and water infrastructure are realistic, that strong 'partnership' arrangements for the implementation of EU-funded programmes are in place, that capacity-building at all relevant levels is addressed at an early stage in the process, and that national transposition of the EU *acquis* is not more cumbersome than the EU actually requires.

- Local authorities themselves, with the support of SCTM, must prepare thoroughly and in good time. This will involve basic awareness-raising of how the EU affects local government, specific training in areas such as public procurement, strategic planning (including input into the programming of pre-accession funding), budgetary planning and revenue-raising for investments in infrastructure, and monitoring of the transposition of EU legislation in key areas. The effectiveness of such capacity-building efforts of course depends on adequate resources as well as political commitment.

There is perhaps an understandable temptation to delay these preparations on the grounds that EU accession is several years away at the earliest, and there are other, more immediate local priorities. But this argument misses three vital points. First, certain key aspects of the *acquis* (on state aids, for instance) already apply. Secondly, uncertainty over certain aspects of the *acquis* (whether communal services will have to be opened up to competition, for example) may already be having an impact on investment prospects. Thirdly, Serbia's negotiating position and definitive plan for alignment with the EU *acquis* is being prepared now; in a few years' time it will be too late to influence this.

An assessment of the present state of affairs, based on the contributions from local experts, varies somewhat for each policy area. But a number of general points are worth noting:

- It is highly positive that local authorities and SCTM are beginning to address these issues at a relatively early stage (compared with counterparts in some recently acceded member states).
- Approximation of national law to the EU *acquis* has progressed considerably in many areas, but there are still large implementation gaps. Local leaders should be aware that some of these gaps (in public procurement, for example) will start to close long before accession actually occurs.
- In some cases there is a need for clarification – by the national authorities, perhaps in consultation with EU institutions – concerning how the *acquis* will apply (notably in the case of public utility companies that might have to be restructured and/or subject to competition).
- The field studies undertaken as part of this project show that there is still some misunderstanding among local officials about the likely impact of accession. The present *acquis*, for example, contains few if any hard requirements concerning pension reform, social security or the representation of women in decision-making (although measures in these fields may nonetheless be a welcome part of local government's contribution to social policy coordination).
- On the other hand, there seems to be a lack of awareness that EU rules in some areas already apply. For example, common practices such as discretionary aids to small and medium-sized enterprises or disposal of land at below the market price are already highly questionable under the state aid rules in Serbia's Stability and Association Agreement, and could in principle be subject to retroactive sanctions.
- In policy areas such as rural development, the current lack of decentralisation in Serbia may prove problematic when it comes to 'partnership' arrangements in the context of EU funds. Evidence from the field studies clearly shows the need for capacity-building (institutional, administrative and financial) in this area.
- There is an evident shortage of cash flow in some areas, such as capacity-building for all municipalities in the field of environmental legislation, or renovation of municipal buildings to improve energy efficiency. While additional resources are hard to find in the current climate, there is also a danger of false economies, where the costs of non-investment exceed any savings made.

For understandable reasons, EU relations tend to be regarded mainly as a matter for foreign policy until a country actually joins the Union. The responsible ministry will, to a greater or lesser extent, consult a range of stakeholders but is generally reluctant to invite them to the negotiating table. But what the present report makes clear is that local authorities are more than just a stakeholder; they have a vital part to play in implementing the *acquis* and ensuring a positive outcome of EU accession for the country as a whole. This role has been somewhat neglected, or at least recognised only belatedly, in some other recent accessions – a mistake that Serbia can and should avoid. For local authorities themselves, the experience of other countries suggests that it is never too early to begin preparing.

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EU accession has a profound impact on local authorities in their roles as regulators, service providers, purchasers of goods and services, energy users, employers and more. Yet in previous accessions, this impact has often been underestimated, leading to missed opportunities and problems that could have been avoided.

This report represents the contribution of both Serbian and international experts to an assessment of the impact of EU accession on local authorities in Serbia. It covers seven policy areas of known concern: public procurement, state aids, communal services, rural development, employment and social policy, energy efficiency and environment. After considering how key pieces of EU legislation and policy have affected local government in existing member states, the report looks at the present situation in Serbia and assesses what local authorities and SCTM could do to improve the outcome.

It concludes that timely preparation and capacity-building at the local level is essential, not least since important parts of EU legislation will start to apply well before accession. But it is also important for the national authorities to take local concerns into account in preparing Serbia's negotiating position and in amending national policies and legislation in line with the EU rules.

This is an example of a fruitful cooperation between the Standing Committee of Towns and Municipalities in Serbia and the Swedish Association of Local Authorities and Regions. Both organizations are very proud of the publication since it represents a pioneer effort in Serbia, but also in the region, in preparation of local governments for EU accession negotiations.

Standing Conference of Towns and Municipalities
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Swedish Association of Local Authorities and Regions
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