

EU Policy Review

Analysis of recent EU legislation and policy for local and regional government

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For further information on these issues, or if you would like to receive copies of any of the documents mentioned, please contact Imogen Sudbery at the IPA (Tel [01] 240 3702 or email isudbery@ipa.ie)

LEGISLATION

The EU Reform Treaty: Implications for Local Authorities

In mid-October, the Heads of State and Government of the EU countries finally reached agreement on a new 'Reform Treaty', to be termed the Lisbon Treaty after the city in which it was signed. The new Treaty retains a number of provisions relevant to local and regional authorities that were included in the new abandoned European Constitution.

However, the new Treaty still has to be ratified in the course of 2008, and as the only country so far to confirm that it will hold a referendum on the text, all eyes will be on Ireland. This article briefly assesses the implications of the Treaty for Irish local government.

Local and Regional Autonomy

Article 4 of the new Treaty officially recognises the principle of local and regional autonomy in the context of the European Union. It indicates that the EU shall respect the national identity of EU countries 'inherent in their fundamental structures, political and constitutional, **inclusive of regional and local self-government**'.

Local level to be Consulted on all Legislative Proposals

The EU's so-called 'principle of subsidiarity' requires the European Commission to ensure that it only puts forward proposals for new European rules when the desired objectives could not be achieved by countries acting individually. The new Treaty includes a protocol revising

this principle to include a reference to the regional and local level. It provides local authorities with two guarantees:

- That the impact of any proposed laws on the local level will be taken into account;
- That local authorities will be consulted before any new legislation is proposed, and will be able to formally object to any proposal they do not consider legitimate.

According to the new Protocol, the European Commission must 'take into account the regional and local dimension of the action envisaged'. All draft laws must include a detailed statement making it possible to assess **the financial and administrative burden that it will place on local authorities, which must be minimised**.

If a local authority believes that a given EU law does not respect this principal, it may object to the European Court of Justice (ECJ) via the Committee of the Regions (see below).

Reinforced Powers for the Committee of the Regions

Although it remains an 'advisory body', rather than an official EU institution, the role of the Committee of the Regions, (which has 9 full and 9 alternate Irish members), is strengthened by several provisions in the new Treaty:

- The right to refer proposals that do not respect the principal of Subsidiarity to the ECJ;
- The right to revert to the ECJ to defend its own powers; and
- An extension of its term of office from four to five years to coincide with the term of office of the European Parliament and the Commission.

Legal protection for public services

Local authorities from across Europe have been campaigning for greater clarity over the impact of European internal market rules on the organisation and delivery of public services (See *EU Policy Review*, December 2006-January 2007 for further details). Many Councils have expressed concerns that opening up certain services to competition could threaten their quality and affordability. They have therefore called for them to be subject to greater legal protection.

In response to these concerns, the Lisbon Treaty would, for the first time, provide these so-called 'Services of General Economic Interest' with a legal basis in EU Law. A Protocol attached to the Treaty sets out a series of principles governing these services that should be respected by all new EU laws. The Protocol stresses the importance of services of general interest and the rights of public authorities to decide how to provide them. All future EU action should respect the following values in this regard:

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

The protocol also states explicitly that the Treaty provisions do not restrict in any way the competences of national, regional and local authorities 'in terms of the offer, regulation and organisation of services of general economic interest.'

In a separate move, the European Commission has published a paper setting out its own approach to the protection of services of general interest. The Commission which recognises that further clarification is needed on how EU competition and single market rules apply to public services, but stops short of proposing new laws, arguing that the Protocol attached to the new Treaty would be sufficient. The Commission rejects the claim that public services are in need of protection from competition, arguing that there is no reason why the objectives of developing high quality, accessible and affordable services should be incompatible with an open and competitive market. It proposes simply an interactive internet forum, where citizens and public servants alike could post questions on how EU law affects services. While the new Treaty and the Commission's proposals certainly bring greater clarity to this grey area, the debate on whether this is sufficient to protect how public services are provided looks set to continue well into 2008.

Commission Starts Legal Action against Ireland over EIAs

Following months of exchanges over the proposed route for the M3 motorway around the Hill of Tara in Meath, the European Commission has announced that it is to take legal action against Ireland for alleged shortcomings in the legislation governing Environmental Impact Assessments (EIAs).

The Environmental Impact Assessment Directive (Directive 85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC requires Environmental Impact Assessments to be carried out before certain types of projects are authorised. The case concerns two aspects of Irish legislation giving effect to the Directive:

- Provisions protecting important archaeological sites; and
- Provisions governing the approval of incinerators and other large industrial sites.

As regards archaeological sites, the Commission is concerned that the way the Directive is implemented in Ireland does not give sufficient protection to sites of national importance. It believes that the Government's decision not to undertake a second impact assessment

after the site at Lismullin near Tara was discovered in 2007 demonstrates this point, and represents a contravention of the Directive.

As far as incinerators are concerned, the Commission believes that Irish rules splitting decision-making between the local authorities and An Bord Pleanála on the one hand, and the Environmental Protection Agency (EPA) on the other, could prevent the environmental impact from being taken into account in decision-making. As such, it considers that there is a risk that the Directive's objectives will not always be achieved.

Announcing the decision, EU Environment Commissioner Stavros Dimas said 'I am disappointed that Ireland has not accepted the Commission view that improvements are needed in its legislation on impact assessments in order to better safeguard, and give the public more say in decisions affecting its rich archaeological heritage, and to better guarantee that industrial projects will be comprehensively assessed.'

It is not expected that the legal action will halt the construction of any ongoing projects, but if the European Court of Justice finds in favour of the Commission, the government would be forced to amend the existing legislation.

Road Safety: Commission Starts Legal Action Over Training of Professional Drivers

The European Commission has decided to take legal action against the Irish Government over its failure to transpose the requirements of an EU Directive on training for professional drivers into national law. Directive 2003/59/EC on the initial qualification and periodic training of drivers aimed to ensure that professional drivers, such as HGV drivers or bus drivers, have a certain level of training as a minimum in order to handle the demands of carrying goods or passengers safely.

The Directive calls for Member States to set up a system of qualifications according to one of two options: a system based on coursework and a test, or one based on a test only. Periodic training is to be organised by approved training centres. Each driver must undergo 35 hours of training every 5 years. Drivers are to be issued with a professional aptitude certificate showing that they have gained the initial qualification or undergone the subsequent periodic training. National legislation including these provisions was due to be drawn up by September 2006, and is supposed to come into force by September 2008 for drivers of passenger vehicles and September 2009 in the case of goods vehicle drivers. Although the Commission sent Ireland a written warning in June 2007, no appropriate national measures have been taken to comply with the Directive.

EPA proposes National Action Plan on Hazardous Waste

Local authorities will be required to expand considerably their facilities for the collection of hazardous waste, and to take a leading role in enforcing revised Regulations to be published in 2008, according to an action plan proposed by the Environmental Protection Agency (EPA). The *Hazardous Waste National Action Plan 2008-2012*, is a

requirement of EU Directive 91/689/EC on Hazardous Waste, and replaces the current plan, which was published in 2001. It recommends that civic amenity centres become the cornerstone for the collection of hazardous waste and requires local authorities to appoint at least one green business officer and one waste prevention officer by 2010.

In total, the plan outlines some details 30 recommendations dealing with:

- Prevention of hazardous waste;
- Collection of hazardous waste and the enforcement of hazardous waste regulations;
- Infrastructure and moving towards self-sufficiency in hazardous waste management;
- Legacy issues such as contaminated soil and old landfill site management; and
- North-South potential for all-island solutions.

The Plan has four key objectives:

1. To reduce the generation of hazardous waste by industry and society generally;
2. To minimise unreported hazardous waste with a view to reducing the environmental impact of this unregulated waste stream;
3. To strive for increased self-sufficiency in the management of hazardous waste and to reduce hazardous waste export; and
4. To minimise the environmental, social and economic impacts of hazardous waste generation and management.

Expanding the Provision of Civic Amenity Sites

The EPA considers it essential that local authorities develop their network of waste collection sites in order to ensure that both householders and small businesses can dispose of a full range of hazardous wastes by 2012. This would require expanding both the number of sites and the types of wastes that can be collected. The EPA recognises that private sector waste producers must also shoulder their own part of the costs and proposes the expansion of retail take back wherever possible. However, in the case of certain wastes, such as hazardous liquids, it accepts that this is not possible and proposes that facilities should be available for their collection at civic amenity sites. The EPA would also like to see local authorities increase the availability of community mobile collection services as a means of filling geographical gaps in static facilities' service provision. The EPA proposes to prepare a code of practice by 2009 on minimum operational and environmental standards for these civic amenity sites, in conjunction with local authorities. It also stresses that the Department of the Environment, Heritage and Local Government must ensure sufficient resources are made available to local authorities to carry out this expanded role.

Shared Services and All-Island Cooperation

The Plan highlights the potential for cooperation between local authorities in the provision of civic amenity site services to householders and businesses. This could help to ensure a certain level of consistency in service and cost efficiency.

Regulation of Hazardous Waste produced by Garages

Garages are a significant producer of hazardous waste streams such as oil filters, lead acid batteries and cleaning rags. Despite the fact that a number of services are available for this kind of waste, the EPA notes that in many cases it is clearly not entering the correct waste

management routes. Information, awareness and enforcement are therefore identified as the key to improved hazardous waste management, with local authorities playing a central role.

Appointment of Green Business and Waste Prevention Officers

The EPA proposes that local authorities should appoint at least one green business officer and one waste prevention officer by 2010. The responsibilities of this position would include working with local businesses and communities towards achieving hazardous waste prevention, accessible and cost-effective collection services, and better compliance with regulation.

Awareness Raising

The Action Plan proposes that as of 2008, local authorities should conduct local or regional awareness and information campaigns pro-actively to inform individuals and businesses of available hazardous waste collection services and their obligations.

Enforcement

The proposed plan foresees additional responsibilities for local authorities as regards monitoring and enforcement of hazardous waste regulations. In the course of 2008, the Department of the Environment, Heritage and Local Government will issue new hazardous waste regulations, on the basis of recommendations made in the action plan. Once these Regulations are issued, local authorities will be expected to commence a programme of enforcement actions with regard to the management of hazardous waste at several categories of small business, including garages, mini-labs, construction sites, industrial, healthcare and others. Enforcement actions should ensure that all generators of hazardous waste are managing hazardous waste in accordance with their statutory obligations and should be repeated periodically during the period of the Plan. In order to facilitate local and concerted enforcement actions focused on particular hazardous waste streams, the waste industry will be obliged to provide information to local authorities or the EPA on their clients and the nature and quantity of hazardous waste collected from them. In addition, producers of hazardous waste will be required to register as hazardous waste producers in order to assist the compilation of data and statistics.

Legacy and Remediation issues

Local authorities, together with the Department of the Environment, Heritage and Local Government, are required to identify, assess and, where necessary, remediate sites where hazardous waste was disposed of in the past. This action should conform with the Code of Practice on landfills that was recently adopted by the EPA's Office of Environmental Enforcement.

Where local area and county/ city development plans include the redevelopment of docklands or other brownfield sites, provision should be made for the co-ordinated management of contaminated soil. The plan suggests that local authorities could, where they have not already done so, take a more pro-active approach in planning for the remediation of such sites by, for example, introducing specific requirements for developers in this regard.

Administrative Arrangements

The National Waste Prevention Committee will act as oversight body for the Plan's implementation, while the EPA will provide the coordination role, with responsibility for promoting, monitoring, reporting and, where necessary,

guiding the implementation activities of other responsible authorities.

The action plan can be found at the following address:

<http://www.epa.ie/whatwedo/resource/hazardous/#d.en.12438>

It is a public consultation document and written submissions are welcome by 31 January 2008 to:

wasteinfo@epa.ie

POLICY INITIATIVES AND ANNOUNCEMENTS

European Commission Publishes Work Programme for 2008

The European Commission has adopted its work programme for 2008, setting out its key policy priorities and goals in the pipeline for the next 12 months. The work programme acts as a useful guide showing when policy papers and draft legislation will be published and provides an indication of how regulation affecting local government could change in the future.

For the coming year, the European Commission has identified five key priorities:

- Growth and employment;
- Sustainable Europe;
- An integrated approach to migration;
- Putting Citizens first; and
- Europe as a global partner.

Elements of particular importance to local government under these five headings include:

- The implementation of the 2007-2012 programmes to support rural development;
- New proposals on a common framework on migration and asylum, including actions to promote the integration of migrants and their access to services and infrastructure. 2008 will also be the European Year of 'Intercultural Dialogue', with a range of projects, events and funding opportunities addressing this theme;
- New action programmes on adaptation to climate change, including 'climate-proofing' key policy areas such as transport and highways; and
- An underlying focus on simplifying existing and future regulation and reducing the administrative burdens of EU law.

In addition, a range of proposals that have already been published and are currently going through the EU's decision-making process are due to be agreed in 2008. These include:

- A major revision of waste and recycling policies to increase recycling and recovery rates and tighten laws on producer responsibility;
- Proposals highlighting the impact of demographic change on services and infrastructure;

- An initiative to combat discrimination by implementing the principle of equal treatment beyond employment; and
- Reviewing the EU budget and identifying future directions for EU funding and expenditure.

EU 'Active Inclusion' Strategy to Benchmark Local Social Services

Improving people's access to quality local services is at the centre of a recently proposed EU strategy on 'active inclusion'. The strategy, entitled *Modernising Social Protection for Greater Social Justice and Economic Cohesion: Taking Forward the Active Inclusion of People furthest from the Labour Market*, follows on from a public consultation launched last year about promoting the active inclusion of people furthest from the labour market. It aims to consider what more needs to be done to ensure that people currently outside the labour market are provided with vocational training and helped to access job opportunities, while guaranteeing those that cannot work with income support at a level that enables them to live a decent life.

While wary about prescriptive rules at EU level, not considered appropriate in the light of the diversity of situations across Europe, most of those who participated in the 2006 consultation agreed that the Commission should take action to renew the EU's efforts to address barriers to active inclusion. The European Commission therefore proposes an approach centred on three core areas:

- Providing unemployed people with support to re-enter the job market;
- Ensuring minimum levels of income support for those who are unable to do so; and
- Improving access to quality services.

The Commission recognises that EU countries should retain the responsibility for defining levels of income support and for establishing the appropriate mix between social welfare and services provision. However, it proposes to adopt a recommendation identifying common principles in each of these three strands of active inclusion. On the basis of this recommendation, specific targets would be set and the progress of each country towards meeting them would be monitored by the Commission.

The efforts of local authorities to improve access to services would therefore be subject to benchmarking, monitoring and peer review at EU level, in the same way that the government is currently monitored on all aspects of its employment strategy.

The common principles proposed in the area of services are as follows:

- Accessibility of services, comprising both availability (including spatial and physical accessibility) and affordability;
- Quality of services, comprising: user involvement; monitoring, performance evaluation and sharing of best practice; investment in human capital; working conditions; framework for equality both in recruitment policies and in service provision; coordination and integration of services; and adequate physical infrastructure, especially in relation to social housing.

The key focus of the strategy will be on social services. However, as the list below demonstrates, a number of activities that are the responsibility of local authorities or local service providers could also fall into this category:

- Social housing;
- Assistance for people facing personal challenges or crises (such as unemployment, debt, drug addiction or family breakdown);
- Activities to ensure that those concerned are able to completely reintegrate into society and into the labour market (such as rehabilitation, language training for immigrants, occupational training and reintegration) and to ensure access to affordable child care; and
- Activities to integrate persons with long-term health or disability problems.

Finally, the Commission stresses that the success of the strategy will depend on the commitment and full involvement of local government, which must play a central role in the development and implementation of active inclusion policies at EU level. In order to support this work, the Commission proposes to support the establishment of a Network of Local Observatories to monitor and promote best practices, especially in relation to access to quality services.

Given the importance of this initiative for their work, the Commission has invited public authorities at all levels to express their views on the approach and common principles outlined above.

The full proposal can be found at:

http://ec.europa.eu/employment_social/consultation_en.html.

Comments or suggestions should be sent by 28 February 2008 to the following address:

empl-active-inclusion@ec.europa.eu.

Imogen Sudbery
Email: isudbery@ipa.ie
Tel: +353 1 240 3702

*Institute of Public
Administration
57–61 Lansdowne Road
Dublin 4
Ireland*