

# EU Policy Review

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

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## LEGISLATION

### New Developments in EU Internal Market Legislation: Implications for Local Service Provision

A number of recent developments have highlighted that a lack of clarity in European internal market rules is increasingly giving rise to uncertainty over how local authorities are allowed to provide services. The internal market rules are founded on the 'four freedoms', protecting the ability of goods, labour, capital and services to move freely around the EU. However, while the rules to guarantee free movement in the first three areas have been in place for some time, the European Commission has only recently begun to tackle the remaining obstacles in the services area. This new legislation has potentially far-reaching implications for the way in which local authorities organise and deliver public services.

The crux of the issue is the difference between services that are 'economic' in nature and services that are provided as a public good (termed 'services of general interest' in EU jargon), a distinction which has yet to be precisely defined. During last year's negotiations over the Services Directive, which will open up the Irish market in services to all EU providers by 2010, the European Commission ran into major difficulties over this issue. The Services Directive aims to cut red tape, remove barriers and improve legal certainty for business and consumers, all of which could

potentially bring economic benefits in terms of growth, competitiveness and jobs. However, many local authorities across the EU expressed concern that opening up certain areas to competition could threaten the provision of high quality, affordable services. In November of last year, a compromise was agreed that removed health and social services from the Directive's scope. Nonetheless, under the agreement reached, a number of public services provided by Irish local authorities, such as leisure services and waste processing will fall under the new rules.

Even before these rules come into force, there have been a number of cases where disagreements over the application of EU internal market legislation have affected Irish local authorities. Last year, the European Commission wrote to the Irish government to complain about national rules that exempt local authorities from applying VAT to public services (see *EU Policy Review*, no. 4/06 for further details). The case in question was where a local authority runs a number of car parks, but unlike private operators, does not charge VAT. The Commission argued that where local authorities and private operators are both providing a service, it is unfair for the private body to have to apply VAT while the public body does not. The Commission will be seeking in 2007 to revise EU legislation governing the exemptions of public services from the application of VAT, and it is clear at this stage that it believes that modifications are needed to Irish national rules. This would have obvious implications for local Councils, not just in the field of managing car parks, but in other similar situations such as refuse collection.

The field of procurement provides another example of the current lack of clarity. Any service provided in-house by a public authority is not subject to EU procurement rules, nor regulated by the Services Directive. However, local authorities increasingly deliver services through Public Private Partnerships (PPPs) of varying kinds, and here EU rules become less clear cut. For example, the town council of Roanne, in Northern France was last month censured by the ECJ for failing to tender for a contract for the development of a community centre. The municipality had engaged a semi-public development organisation to coordinate the project, without making the contract subject to a call for tenders. It argued that the development organisation would be responsible for providing a service, rather than constructing the building, but the court took the view that the agreement nonetheless constituted a public works contract and should therefore have been subject to a tendering process. This case may be less controversial than some, but it does highlight the legal ambiguity over the status of organisations delivering services on behalf of a public body.

This ambiguity is likely to increase with the profusion of various types of semi-public bodies, Public Private and even public-public partnerships. For example, on the foot of the Indecon report, local authorities are beginning to consider the benefits of establishing joint services with other neighbouring authorities that work across council boundaries. Sharing 'back office' functions such as payroll, legal services, IT support or human resources can offer economies of scale and, if successful, the practice could ultimately be extended to frontline services. However, this way of working could require particular procedures to be followed under EU rules, as it may be considered that one authority is effectively purchasing services from other authorities. Draft legislation on these so called 'Concessions' is also due to be published by the Commission in 2007.

The UK's Local Government Association has been watching these developments with growing concern. While recognising the potential benefits of increased transparency and competition, the association believes that the EU is becoming overly involved in how local authorities choose to deliver their services. The LGA has expressed particular concern over the following:

- The ten day stand still period to allow unsuccessful bidders the opportunity to challenge the award of a contract;
- 'Competitive dialogue', which can require bidders to remain fully involved in the award process right up to the final stages; and
- An increasing insistence by the EU that low value contracts are advertised excessively widely.

In response to the lack of clarity in all the above-mentioned areas, the Commission is seeking to lay down general rules to establish what constitutes a 'service of general interest'. Last year's Communication on Services of General Interest proposed a broad framework determining how services should be treated for the purposes of internal market legislation. It sought to formalise a series of ECJ rulings that consider the vast majority of social services to be economic in nature. In 2007 the Commission is expected to propose a draft Framework Directive on the topic.

In addition to this proposal, a series of further developments are expected in 2007, including:

- The implementation of the 2006 EU Public Procurement Directive and proposals for a number of further changes to the procurement rules;
- Revision of EU 'Remedies' Directive, setting the rules regarding complaints over procurement procedures for large projects;
- Draft legislation on Concessions and PPPs, laying down an EU-wide definition of a Concession and determining the relevant financial thresholds;
- New EU guidelines on 'sub-threshold' tendering for small projects and transparency in the award of contracts.

Developments in this area throughout 2007 will need to be carefully monitored by local authorities. While some will present additional challenges, the new proposals should at least bring some much-needed clarity to the implications of EU internal market rules for local services and help to ensure that Councils get the best deal from their contractors.

The LGA's statement can be found at the following address:

<http://international.lga.gov.uk/news/2007/08-Jan-2007.html>

## Environmental Compliance: Challenges Ahead for 2007-2013

Compliance with key EU environmental Directives over the lifetime of the new National Development Plan (NDP) 2007-2013 will pose significant challenges for Ireland, according to a government report published last month. 'Ireland's Progress Towards Environmental Sustainability', produced by the Department of the Environment, Heritage and Local Government, notes in particular the difficulty of keeping within the national EU emissions ceiling limit for nitrogen oxide, due to the ever-increasing number of cars and fuel consumption. The rise in road transport will also contribute to the problem of greenhouse gas emissions, which Ireland is committed to reducing under the Kyoto protocol. The report shows that between 1990 and 2004, fuel use in transport more than doubled, as did greenhouse gas emissions from transport.

Other EU targets that must be met over the next decade include the reduction in landfilling of biodegradable waste to 35 per cent of its 1995 level by 2016 under the Landfill Directive, and combating the pollution of rivers and estuaries under the Water Framework Directive.

Despite the magnitude of the challenges, the report maintains that the investment framework set out in the new NDP 2007-2013, which was published in January, is sufficient to meet these challenges. In addition to measures already introduced to reduce emissions, €14 billion will be invested in measures to reduce carbon dioxide, including €13 billion in public transport and €750 million in waste management. €270 million has been allocated to purchase carbon credits and there will be considerable investment in renewable energy technologies. Finally, on water quality, the government says that the Nitrates Action Programme and an increased uptake in the Rural Environmental Protection Scheme for farmers will help to reduce the pollution of rivers and estuaries.

Further information can be found at: <http://www.environ.ie/doi/doihome.nsf/0/CE33A717E397DAB4802572740052E836>

## POLICY INITIATIVES AND ANNOUNCEMENTS

### European Commission Proposes Major Energy and Climate Change Strategy

The European Commission has published a wide-ranging package of proposals with a view to addressing the challenges of climate change, escalating energy demand and security of supply, as mentioned in *EU News Bulletin*, No.34. Following last month's publication of a strategy to reduce energy consumption by 20% through energy efficiency measures, this complementary package, billed as a 'Strategic Energy Review' is guided by an overarching proposal to cut CO<sub>2</sub> emissions by 20% by 2020. The target is the key goal of the Commission's proposed strategy on climate change, a bid to show global leadership on a roadmap for the reduction of CO<sub>2</sub> emissions after the Kyoto protocol expires. Ultimately, the aim is to reach agreement among developed nations on a commitment to reduce carbon emissions by 30% by 2020.

If implemented, the Commission's proposals would have a major impact on consumers, businesses and the public sector across Europe. While the Commission has stopped short of producing draft legislation at this stage, it has set out in the Strategic EU Energy Review a far-reaching legislative and policy framework that it considers necessary to achieve these targets, together with a proposed timeframe for action. The proposals will be discussed by EU Ministers in early Spring.

The Commission maintains that the measures can be achieved with very little negative impact on the global economy, and would bring significant potential benefits. Aside from the obvious goal of slowing down the pace of climate change, the Commission aims to stimulate a more efficient competitive energy market and promote technological change and employment. As such, it estimates that every euro invested will result in two euro of savings. Taken together, the measures should herald the start of a 'new industrial revolution'.

The energy package comprises ten separate documents:

- The overarching energy policy strategy;
- A proposed strategy on climate change;
- An annual review of the Renewable Electricity Directive;
- A renewable energy road map;
- A mid-term review of the Bio-fuels Directive;
- A strategic energy technology plan;
- A strategy to support the development of 'clean' fossil fuels;
- A proposal for an EU policy on nuclear power;
- A progress report on the implementation of the internal market in gas and electricity; and
- A priority interconnections plan for gas and electricity.

The Commission has grouped these documents under three objectives:

- Accelerating the shift to a low carbon economy;
- Completing the EU internal market in energy; and
- Promoting energy efficiency (action plan already published in December).

### Accelerating the shift to a low carbon economy

The Commission's strategy on climate change sets out proposals for action to prevent global warming from exceeding 'dangerous levels', defined as a 2°C rise above the temperature in pre-industrial times. In order to have a 50/50 chance of staying within the 2°C limit, global emissions will need to be reduced by as much as 50% below 1990 levels by 2050. The strategy proposes a new global climate change agreement whereby developed countries would cut their emissions to an average of 30% below 1990 levels by 2020.

Increasing the proportion of the EU's energy coming from renewable sources will be central to the achievement of this target. The annual review of the 2001 Directive on the Generation of Electricity from Renewable Sources estimates that by 2010, 19% of all energy produced in the EU will come from renewable sources. Although this is close to the target of 21% set in 2001, the Commission stresses that only a limited number of countries have made any real progress in the past year. Ireland is one of the few countries considered on track to meet its 2010 targets, thanks to the introduction of a new feed-in support system, whereby energy produced by renewables is guaranteed a fixed price when sold to the grid.

On the basis of this annual review, the Commission sets out a road map containing proposals for binding future measures. It sets a target of 20% of energy production to come from renewables by 2020, which would be achieved through a range of measures, including tax breaks and direct funding. In addition to electricity, two other sectors are targeted: transport and heating and cooling. With regard to electricity, the Commission signals its intention to harmonise support mechanisms for green electricity at EU level with a view to including them in the single market for electricity in the long term. However, with the exception of biofuels (see below), individual targets for the development of specific types of renewable electricity generation are to be abandoned, leaving national governments the flexibility to promote the development of different sectors.

This approach also applies to the development of nuclear fuel, which is the subject of a separate analysis published in the review. The Commission states that any future legislation in this area will not oblige countries to use nuclear energy, although countries which choose not to will have to offset their carbon dioxide emissions in other ways.

The only sector to be granted its own target is that of biofuels, in view of their potential impact on the transport sector. The mid-term review of the 2003 Directive on Biofuels stresses that transport emissions are set to increase by 77 megatonnes of CO<sub>2</sub> per year from 2005-2020, or three times more than any other sector. It concludes that biofuels offer the best opportunity for the EU to cut carbon emissions from transport. As a result, it proposes that 10% of all energy should come from this sector by 2020; an ambitious target, given that the current figure is only 1%.

No legislative proposals are set out for the heating and cooling sector, despite the fact that it accounts for 50% of total energy demand in EU. However, the Commission has indicated that legislative measures will be presented in this area later in the year, as part of a comprehensive renewables package.

In addition, the structural funds will be channelled to support the sustained use of renewable energy in this sector, and 50% more funding will be provided for research and development projects through the 7<sup>th</sup> framework programme.

The final measures proposed to promote the shift to a low carbon economy concern the development of 'clean' fossil fuels. The Commission envisages that existing power plants that use coal, gas and oil will continue to make up a substantial proportion of the fuel mix, employing new technologies that reduce the CO<sub>2</sub> they emit. A funding package of €6bn is proposed to support the development of these technologies, collectively known as carbon sequestration.

### Completing the EU internal market in energy

The second pillar of the Commission's plans contains a set of proposals to reform the EU's energy market, which aim to complete the liberalisation of gas and electricity markets and improve infrastructure connections within the EU. The aim is two-fold: to reduce the price of energy in the EU while improving the security of Europe's supply.

### Achieving Energy Efficiency

The third and final pillar concerns energy efficiency, and reiterates the EU's ambitious objective of saving 20% by 2020. New legislation in 2007 is expected to set stringent energy efficiency standards for homes and buildings and to introduce stricter energy reductions in organisations (see EU Policy Review 06/06 for further details.)

Local and regional authorities are expected to contribute by simplifying authorisation procedures, improving pre-planning mechanisms and integrating renewable energy into local and regional planning. They will also be required to lead the way in meeting energy efficiency targets.

All the strategy documents can be found at:  
[http://europa.eu/press\\_room/presspacks/energy/index\\_en.htm](http://europa.eu/press_room/presspacks/energy/index_en.htm)

## Ireland Meets Recycling Targets Ahead of Schedule

Ireland has reached EU and national recycling targets six years ahead of schedule, a new report by the Environmental Protection Agency (EPA) has revealed. The EPA's National Waste Report 2005, which presents the latest available national statistics on municipal waste collection and management, finds that 35% of waste produced in Ireland is now being recycled- the target set for 2013 just seven years ago. However, it also finds that the amount of waste going to landfill, at 77%, remains too high.

The report highlights promising signs of break in the link between economic growth and waste production. Whereas the economy grew by over 18% between 2001 and 2005, growth in the production of waste was only 6%.

Speaking at the inaugural recycling consultative forum earlier this month, Minister for the Environment, Heritage and Local Government, Dick Roche, TD, acknowledged the contribution of local authorities in providing the infrastructure needed to secure this achievement, noting

that "local authorities continue to play a central role in providing services and regulating activities." Equally, he congratulated other stakeholders involved in recycling, not least the householders around the country who are 'the ones driving increases in recycling.'

The new EU thematic strategy on the prevention and recycling of waste and the associated review of the EU Waste Directive due later this year will provide a framework for the future progress in this area.

## Commission Launches European Year for Equal Opportunities for All

More than half of Europeans think that more should be done to fight discrimination in their country and most believe that a person's ethnic origin, religion, disability or age can be an obstacle in finding a job, according to a new EU survey on anti-discrimination. These findings are behind the European Commission's decision to designate 2007 the Year of Equal Opportunities for all, which kicked off in Berlin on January 30th.

At local, national and European levels, activities will be organised around the Year's four key objectives: rights, representation, recognition and respect. One of the key aims of the Year is to raise awareness of the existence of anti-discrimination laws (on grounds of sex, ethnic or racial origin, age, sexual orientation, disability, religion or belief), as surveys demonstrate that only one third of citizens claim to know their rights in this area.

At EU level, the priorities of the Year will also be incorporated into all funding programmes, which means that any funding applications made by local authorities during 2007 will stand a better chance of success if they help to meet anti-discrimination objectives. In particular, the EU's new programme for employment and solidarity, entitled PROGRESS (see *EU News Bulletin* No.31 for further information), will act as a forum for the exchange of best practice in this area.

However, most of the activities foreseen will take place locally, regionally and nationally, involving local authorities, trade unions, employers, NGOs and youth groups. In Ireland, activities will be coordinated by the Equality Authority. Although the financial sum allocated to Ireland is limited (€150,000 plus an equal amount of national matchfunding), the Equality Authority has emphasized that its importance lies in its role as a lever for the further development of policies, programmes and practice to promote equality, accommodate diversity and combat discrimination. It aims to use the Year to provide a stimulus for:

- Reflection on how we define equality and on how equality is affected by current policy and practice;
- Implementation of equality issues within the design and development of new policies and programmes;
- Action to enhance the equality competence of key institutions and organizations;
- Initiatives to further develop channels of communication and advocacy with groups that experience inequality;

- Action to address remaining issues within each of the grounds covered by the EU Directives (gender, disability, sexual orientation, age, religion and race/ethnic origin); and
- Exploring issues of multiple discrimination for women across these six grounds.

For further information on the activities taking place Ireland, or on the Year in general, please go to:

[http://ec.europa.eu/employment\\_social/eyeq/index.cfm](http://ec.europa.eu/employment_social/eyeq/index.cfm)

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