

ECONOMIC INTERVENTION BY LOCAL AND REGIONAL AUTHORITIES

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I. SCOPE, DEFINITIONS AND CONTEXT

Local and regional authorities are defined to include all levels of self-governing territorial authorities below the central/federal level. They create jobs as employers and as purchasers of inputs from the private sector. They may also pay subsidies and grants to economic organisations or participate in the financing of their activities in order to stimulate employment and other economic activity. They often regulate economic activities (e.g. through health and safety at work legislation) and provide the social and physical infrastructure which complements private economic activities.

This study is concerned with only one small part of the economic impact of local and regional governments. It adopts precise definitions of the economic activities carried out by them and of the institutional arrangements under which they are undertaken. It is concerned with commercial, business or market activities carried out directly by local and regional authorities (e.g. through trading enterprises) and those undertaken in partnership with, or through equity participation in, private sector businesses.

Economic activities are restricted to provision of public services financed mainly through user fees or charges (for example, public transport, energy and water), business land development schemes which are primarily economic or commercial in nature, commercial services, manufacturing of goods to be sold on commercial terms and the creation and operation of savings, credit and investment financial institutions.

Institutional arrangements are restricted to conventional departmental structures and those with independent accounting mechanisms, to local and regional trading enterprises (for example, in construction, management and public transport) and to equity shareholdings in, and partnership arrangements with, private sector business.

There are many other possible forms of economic intervention in which local and regional authorities may be engaged. These include financial assistance such as labour and investment subsidies, provision of free or subsidised sites and premises, training, relief from local property taxes, business counselling and advice services to new and existing firms, referral services (eg to national and European programmes), assisting technology transfer through improved production processes and product development, trade missions/fairs/directories, various forms of advice regarding the Single European Market and staff training for managers and employees. However, these are not within the remit of the present study.

II. ECONOMIC ACTIVITIES OF LOCAL AND REGIONAL AUTHORITIES: AN A *PRIORI* ANALYSIS

Some general issues must be discussed before analysing the results of the survey of local and regional authorities' economic activities. This *a priori* analysis will assist both in placing the survey in context and in interpreting the results.

1. Legal competencies and liabilities

Legal powers can be explicitly related to the economic role of authorities or arise out of general powers intended for other purposes. The latter may not lead to the most appropriate responses by local and regional authorities in developing their economic activities.

Legal powers can be used to control the nature and extent of economic intervention through the direct creation of local and regional municipal (and intermunicipal enterprises), through equity holdings and through partnerships. The law can simply be in the form of blanket provisions, whether to prohibit all economic activities or to allow local and regional authorities complete discretion and autonomy. Alternatively legal powers can be specific to particular activities.

Either form of legal power (blanket or specific) may be set down in a formal constitution or be derived from other pieces of legislation where no constitutional right of local self-government exists.

No matter how an economic activity is provided, whether through direct provision, through partnership with private sector companies or through ownership of their equity, there may be an explicit legal requirement that such activities should be consistent with the statutory duties of local authorities, be in pursuit of the local public interest and be consistent with the national interest. Alternatively, this limiting condition may be in the form of an unstated implicit presumption.

The way in which the economic activity is provided has implications for the sharing of any losses incurred by economic activities. In general, legal liability for any financial losses will automatically be limited by equity ownership.

Local and regional authorities may not be so protected from the financial effects of losses incurred by their enterprises (including intermunicipal enterprises) even if they have separate legal identities, clearly distinct from their parent authorities. This would arise if the limited liability afforded to private companies did not extend to regional and municipal enterprises. This appears to be generally the case.

The same legal liability may also extend to partnerships. However, less integrated forms of partnership or cooperation may afford more protection, for example when economic activities are contracted out to private firms. Contracts can be arranged so as to shield client authorities from losses incurred by the contractor. Such financial protection is crucially dependent on the form of the contract entered into by local authorities. In general, their financial liability will be limited unless deficit guarantees have been written into legally binding contractual agreements.

Whilst equity holdings may give more protection against liability for debt in the event of bankruptcy than does full partnership, it may not in fact be possible for a local authority to deny a moral responsibility for the debt of a company in which it is the majority shareholder. The distinction between these two forms of financial interrelationship may then simply reflect historical circumstances regarding both the development of the economic activity and the development of municipal responsibility for the service.

2. Direct creation of local and regional enterprises

National, central or federal governments may regulate the creation of local and regional enterprises in order to maintain clear divisions between the various levels of government. Regulation can be used to retain at the central level responsibilities for general economic policies, including those for employment and for industrial and commercial sectoral planning.

Even where there are no specific regulations controlling the direct creation of such enterprises, there may be an implicit division of responsibilities through a general understanding of the respective economic roles of different levels of government, especially one which has been maintained over successive changes of national governments of differing political persuasions.

Whether specific regulations exist or not, directly created local and regional enterprises can be expected to be subject to the general trade, competition, consumer protection and civil laws including those regulating the activities of private limited liability and joint stock companies.

3. Partnerships and equity holdings

Besides directly undertaking economic activities themselves, local and regional authorities may also use indirect means to ensure the provision of particular services to the levels and standards necessary to secure the local and regional public interest. They may enter into partnerships with private sector commercial companies as a means of reaching explicit contractual agreements regarding the provision of services. Alternatively, they may purchase the equity of private companies in such proportionate amounts as necessary to give them overall control of company decisions through their capacity as major shareholders.

The choice between equity holdings and partnership is likely to reflect historical circumstances and/or the nature of the economic activity. For example, where a private company already provided the service at the time when the local or regional authority was attributed with (or itself adopted) responsibility for ensuring its availability, equity shareholdings may have been the most feasible means of securing greater public control. On the other hand, a partnership with a private company involved in the economic activity in other administrative areas, or one with experience in providing a related service, may have been more practical where the economic activity was not previously provided in the locality or region.

The analytical rationale for distinguishing between partnerships and equity participation is that it is generally easier to withdraw from an equity interest. Withdrawal can be achieved simply by selling one's shares in the relevant company. Links with companies through partnerships are much less flexible in that contractual arrangements have usually been entered into, assets are jointly owned or operated and sale of one's share of the partnership may either not be possible in practice or be disallowed by that agreement.

The conceptual distinction between partnerships and equity holdings seems to be of less practical relevance where the economic activity is a statutory duty on the part of the local or regional authority. In such a case, both withdrawal from the partnership or sale of the equity could cause the local authority to be in breach of its legal responsibilities. In such cases, there is little real difference between the two forms of cooperation, especially where rules require the local authority to have a minimum of 50% shareholding or a minimum proportion of capital investment in any partnership.

The distinction between equity shareholdings and partnerships becomes more pronounced when the economic activity is primarily commercial and profit-making and is not a statutory duty for the local or regional authority. In such cases a partnership would expose the authority to too much financial risk. However, it is not clear why authorities should participate in the equity of such companies. If the objective was to stimulate the development of the local economy, a more effective use of limited funds may be to use them to finance provision of necessary infrastructure (e.g. small factory workshops, possibly at subsidised rents) or to assist with product development and marketing.

It would be difficult to justify partnerships with companies whose activities bear little or no relation to the objectives or functions of local or regional authorities. However, the rationale for equity shareholding seems to be less obvious than for partnership. It would be difficult to justify equity shareholding unless two conditions were simultaneously fulfilled. First, the local or regional authority would have to be the majority shareholder and, second, the company's activities would have to be clearly relevant to the objectives or functions of those authorities. Shareholding purely for the sake of risk capital investment, would seem to be *ultra vires*.

In general, it can be expected that local and regional authorities will have the same rights as other shareholders. However, to the extent that they acquire equity in private companies whose outputs are of strategic importance to the provision of communal services, local and regional authorities may seek to go beyond the normal legal relationship between shareholder and company. The incentive to do so can be expected to be greater, the more strategically important the companies' outputs to communal services.

Partnerships and equity do not create a clear line of accountability between local and regional authorities and their constituencies. Direct provision does create a clear association between the economic activity and the local and regional authority. It therefore highlights the direct accountability of local and regional authorities for the provision of a particular economic activity. However, the use of partnerships and equity begins to cloud local and regional authorities' accountability. They divide accountability and so may make the authorities' connection to the activity somewhat tenuous. They also cause the activity to become subject to other forms of accountability in addition to the political accountability relating to local and regional constituencies. For example, private companies in which local and regional authorities have equity participation are subject to business and civil law.

On a more positive note, partnerships are a recognition of the interdependence and complementarity of the public and private sectors. This interdependence is emphasised during periods of rapid economic change, including not just industrial rationalisation but also a fundamental restructuring of the whole pattern of ownership and location of industry and its control, technology, employment and sourcing of other inputs.

III. POLICY FRAMEWORKS

The policy framework within which local and regional authorities undertake their economic activities has two broad approaches:

1. The market-oriented approach

This approach assumes that private markets secure the public interest. It assumes that private companies can provide the full range of economic activities and that the benefits of economic growth "trickle down" to all groups in the community. As a consequence, the local and regional authorities' role is marginal. It is simply one of facilitating initiatives by the private sector and other central/federal agencies.

This approach may be based on pragmatism (reflecting the limited resources of local and regional authorities) or a political predisposition in favour of markets and/or central direction. Economic activities such as public transport, supply of energy and water and refuse collection and disposal would be left solely to private companies.

Where provision of these economic activities was not to the levels or standards deemed necessary by local and regional authorities, for example because of low or negative profitability, they would only intervene to the extent necessary to secure provision by private companies. Subsidies would be paid to stimulate provision of unprofitable services or service provision could be contracted out to private companies.

2. The interventionist approach

The market-orientated approach is low-key, minimalist and consensual. In contrast, the interventionist approach is of a more controversial, large scale, high profile and proactive character. It challenges market processes and the acceptability of their outcomes. It uses greater resources in attempting to prevent adverse market outcomes before they occur, rather than simply responding to them after the event. Whilst the details vary between authorities the main characteristics are:

- (a) Defensive Actions: preventing local business closures and job losses by providing extensive technical and financial support, working with management to improve production methods, product design and marketing. Commercial viability is still paramount but may be qualified by a desire to give workers an effective input into company decisions.

- (b) Promoting Structural Change: identifying key industrial sectors towards which investment, training and other measures will be directed in the medium to long term. This is in contrast to the short term, one-off actions of the market-orientated approach. For example, key sectors could include advanced engineering, electronics, health care, tourism, furniture, financial services, telecommunications or energy. One or more of these could be promoted in order to reduce dependence on declining sectors, for example heavy, automotive or marine engineering.
- (c) Targeted Measures: positive discrimination whereby training and employment initiatives are specifically targeted in favour of economically disadvantaged groups. Such social control may be regarded as economic democracy, paralleled by political democracy.

The interventionist approach can pursue its objectives through three market forms:

- i. The Liberal Market where the emphasis is on facilitation through the general legal framework. Primacy is given to individual's decisions taken within markets with no direct State planning. Deregulation and the release of competitive market forces are the primary objectives of policy and intervention.
- ii. The Socialised Market where directive planning and control is undertaken by State agencies and facilitated by public ownership and economic planning agreements. This emphasises restructuring and public control over markets and is associated with radical Socialist ideologies. Rather than simply facilitating local economic growth in the hope or belief that the benefits of growth will "trickle down" to economically disadvantaged socioeconomic groups, authorities may attempt to direct those benefits to particular sectors of the community (e.g. women, the disabled, unemployed, unskilled or ethnic groups).
- iii. The Modified Market where mixed public-private ownership within a Social Democratic/Labour political base replaces sole dependence on private property rights. Intervention occurs through bargaining, indicative planning and consensus within a corporatist framework, the intention being to offset market weaknesses.

These models emphasise that the different approaches and forms of intervention arise out of political ideology acting within particular constitutional and institutional frameworks. Such political and institutional influences can be expected to lead to significant differences in the extent and nature of economic activities undertaken by local and regional authorities both within and between different countries, especially if they have considerable autonomy, free of control by the central state.

The legal status of powers, activities and instruments and the institutional arrangements for their discharge and accountability may be the same across local and regional authorities within or between countries. However, the way in which policies are implemented will be profoundly influenced by the market model (and its associated ideological base) within which implementation occurs.

IV. CHANGING CONTEXTS

Local and regional authorities have increasingly concentrated on the stimulation of indigenous economic activity if only because of the general lack of inward investment sought by regional policy initiatives. They have democratic legitimacy, a concern for the locality, an intimate knowledge of local characteristics and often have both the powers and resources necessary to underpin intervention.

An increasingly complex pattern is developing as local and regional authorities accumulate experience and powers and as they monitor and review activities within an increasingly pluralistic pattern of intervention by a myriad of agencies. Some authorities have pushed back the frontiers of the economic role whilst others have followed in their wake. There is less emphasis on creating jobs at any price, this being replaced by a more sophisticated and professional approach.

Reactive and ill-considered responses to local economic problems are giving way to strategic, focused, interventions based on research into local labour markets and the economic needs of particular socioeconomic and ethnic groups. Promotion of service employment is increasingly supplementing (if not replacing) industrial employment. Environmental issues (e.g. relating to congestion and pollution) have also come to the fore. There has been a shift away from direct provision in favour of an enabling approach using "arm's length" agencies and partnerships with the private and voluntary sectors.

Partnerships are a recognition that local and regional authorities cannot provide the necessary infrastructure or develop their local economies on their own. A shift towards partnerships is possibly a reflection of the growth of both an enabling philosophy and a "contract culture". Enabling has increasingly been interpreted as "leverage", ideally a small amount of local and regional authority finance bringing forth (levering) a much larger amount of external finance (whether from the private sector and/or from the rest of the public sector). Such leverage can be in terms of cash or "in kind" contributions. For example, an authority may provide the land on which private firms build commercial office, retail or leisure developments.

Economic development activities *per se* are becoming much more comprehensive, involving not just the narrowly defined activities used for this study but also redirecting aspects of education, housing, recreation, environmental health and personal social services in addition to the traditional activities of planning and provision of land and buildings. Local and regional authorities are increasingly developing corporate roles for economic initiatives, working to economic development plans. Hence, surveys (such as this one) of the economic role of authorities which are narrowly focused on powers, forms of intervention, policies, activities and policy instruments are necessarily partial. They are likely to grossly underestimate the economic role of local and regional authorities. Similarly, exclusion of leverage funds and partnership arrangements will also underestimate the total impact.

V. LOCAL AND REGIONAL AUTHORITIES ECONOMIC ACTIVITIES

This section summarises the results of a questionnaire survey of the economic activities of local and regional authorities. As noted above, precise definitions were used so as to standardise responses to the questionnaire survey.

The questionnaire was sent to all of the 32 member states of the Council of Europe in early 1994. No replies were received from Iceland, Liechtenstein, San Marino or Slovenia. In addition, not all replies to the questionnaire were complete, the result being that information specific to particular questions is either partial or not available at all for some of the respondents.

The following 11 headings are derived from the 11 questions in the questionnaire, the numbers being the same in both cases. Responses to each question are summarised below, country by country, followed by a short overview of responses.

1. Economic activities undertaken directly

Table 1 on page 20 provides a summary matrix of the economic activities undertaken directly by local and regional authorities.

In **Austria** municipalities undertake directly, or through joint authorities, a number of services including: public transport, electricity and water supply, sewage and waste disposal and land development (for transfer to the private sector). At the regional level, the *Länder* may establish their own companies for the purposes of electricity supply or financial services (e.g. regional mortgage banks). There are also cooperative enterprises, jointly owned by *länder*, towns and other public institutions, such as banks, insurance companies, private funds, etc. Finally, the City of Vienna, due to its dual status, being town and land at the same time, runs a number of economic units in the public service sector in the form of enterprises or operational units.

In **Belgium** economic activities undertaken directly by local and regional authorities are few in number, the tradition being to organise them on an intermunicipal basis. Activities include public transport, electricity, water, waste collection and disposal and land development. The first is provided at the public enterprise or internal regional level. The rest are provided variously by intermunicipal or public enterprises or by the local communities.

In **Bulgaria** municipalities undertake a wide range of economic activities. Over two thirds of municipalities use municipal companies operating under commercial legislation to provide public services financed mainly through user charges, including public transport, water supply and sewerage, waste collection and district heating. Around a half of municipalities use companies to provide commercial services and manufacturing, including the trading of foodstuffs and other goods, restaurants, hotels, public catering, bread and bakery manufacture, personal and domestic services (e.g. hairdressing and dry-cleaning). Two fifths of municipalities use companies to provide construction services, including investment, design and building. A fifth of municipalities use companies to provide "other" services, including culture and recreation, educational catering and research and development. Departmental delivery of such services is more common for smaller municipalities as well as for certain activities (namely construction and "other" activities).

In **Cyprus**, by law, local authorities cannot deal with commercial or business activities with profit objectives. Their main economic activities are water supply and sewerage, collection and disposal of waste and slaughter houses. Intermunicipal enterprises are most common for waste collection and disposal.

In the **Czech Republic** municipalities' economic activities include waste collection and disposal, water supply and sewerage.

In **Denmark** municipalities are generally not allowed to undertake commercial economic activities. However, municipalities are allowed to provide "common goods", including water and sewerage, electricity, gas, waste collection and disposal (including recycling), local bus and ferry services. They can be delivered directly by departments but are most commonly delivered through intermunicipal enterprises. County councils provide regional bus and ferry services. Both regions and counties can sell know-how and by-products (e.g. wood from a municipal forest).

In **Estonia** municipal enterprises undertake economic activities, including housing, waste collection and disposal, public transport, sewerage disposal and (in some places) water supply. They are either not allowed to or simply do not sell commercial services or manufactured goods or undertake business land development schemes. Water and electricity are each provided by national companies.

In **Finland** municipalities' (separately or jointly) economic activities include water and sewerage, refuse collection and disposal, public transport, ports (in the biggest cities) and electricity. These activities can be provided by municipal or intermunicipal companies or departments, the former being most common for the biggest municipalities and cities.

In **France** local and regional governments can perform various industrial and commercial public services, including public transport, collection of household waste, sewerage and various local economic development initiatives. These economic activities can be managed directly or through intermediary organisations. Direct financial assistance to private businesses is the competence of the region. However, specific national legislation also allows departments and communes to supplement the assistance given by the region within set ceilings. Regions are free to determine the rules for the award of subsidy, the list of eligible activities and the number of permanent jobs which enterprises must create or maintain in order to receive subsidy. Regional subsidies can be made in the form of loans, advances and rebates of interest to assist the creation of enterprises and employment. There are also subsidies for the extension, conversion and renewal of activities. These subsidies are also subject to maximum amounts. Equity holdings in risk capital, property companies and underwriters is largely directed towards the creation of these enterprises.

In **Germany** economic activities include water and sewerage, electricity, gas, district heating, public transport, waste disposal, land development, construction of housing, public savings banks, health resorts (spas) and "other" economic activities such as gravel pits, sawmills, fruit growing and wine production. The organisation and the level at which the economic activity is undertaken depends on the size and structure of the local authority and the nature of the activity. Organisational forms include departmental provision (the activity has no separate legal entity), through separate companies or through intermunicipal enterprises.

In **Greece** water supply and collection of household waste is undertaken by departments whilst the manufacture of goods such as bottled mineral water and oil, quarry materials and gas filling stations are undertaken by intermunicipal enterprises.

In **Hungary** the economic activities of municipalities include local public transport, district heating, water supply and sewerage and waste collection. They are mainly undertaken by local enterprises.

In **Ireland** economic activities by local authorities are limited and can include business land development schemes (e.g. industrial development parks), leisure and heritage centres, tourism amenities and facilities, car parks and other limited small scale commercial activity. Also waste collection is often contracted out. User charges apply for local authority operated services such as water, sewerage and waste.

In **Italy** local authorities can undertake such economic activities which are relevant to social objectives and to the social and economic development of the locality. They include water, gas, electricity, pharmacies and public transport. Activities undertaken directly by the regional governments include public transport (including buses), hotels, campsites, holiday homes, camps and harbours. There is no difference between private and public activities since these economic activities must be run economically in order to provide a reasonable rate of return and so reduce local taxes. The system of management and the criteria for choice of service are at the discretion of each commune and province and can include concessions, special administrations, limited liability companies and joint companies.

In **Lithuania** economic activities through enterprises include construction, housing repairs and maintenance, public utilities, public transport by bus, public catering, irrigation.

In **Luxembourg** economic activities undertaken directly by local authorities include public transport, electricity, water, sewerage, gas, waste collection and disposal and business land development projects. Economic activities are carried out either internally or through joint authorities.

In **Malta** local governments are prohibited by law from entering into any form of commercial partnership in furtherance of their functions or otherwise. They are also precluded from holding or investing in any commercial undertaking. They are however expected to contract out and expose to competition any of the functions which have been assigned to them by law. They may do so individually or through intermunicipal contractual partnership schemes. Hence there are no responses for Maltese local governments for subsequent questions.

In **the Netherlands** local municipalities' and regional governments' economic activities include water supply, urban bus transport, gas, electricity, housing and business land development. Municipalities also undertake accountant's services and credit financial institutions. Intermunicipal economic activities include waste collection and disposal, seaports, fish markets and mortgage banks. These activities are usually provided through arms-length companies

In **Norway** economic activities undertaken by municipal departments include water and sewerage, waste collection and disposal, housing, land development and property management, business development funds and housing. Electricity and local and regional passenger transport are generally undertaken by intermunicipal enterprises. Community centres and kindergartens are usually owned and run by local authorities whilst cinemas are run locally within a national superstructure also controlling the major film distributor.

In **Poland** economic activities carried out by the communes in the past could be either part of the internal structure of local government or a separate intermunicipal enterprise. They include public transport, waste collection and disposal, water and sewerage and land development. Since 1992 communes have not been allowed to undertake economic activities which have a profit objective. This prohibition is in force until June 1995. New enabling legislation is presently being considered (see section 10).

In **Portugal** economic activities include water, sewerage, electricity, household waste management, markets, food hygiene and public transport. These activities can be undertaken internally by their associations or by autonomous municipal organisations. Water supply, sewerage and household waste management can be dealt with in the form of public-private partnerships or concessions. The law also permits municipal, intermunicipal and regional enterprises. These forms of organisation are recognised as legal persons with separate budgets and accounting systems. Activities also include local development, tourism, industrial parks, and so on.

In **Romania** economic activities include public transport, water and sewerage, waste collection and disposal, road maintenance, etc. These activities are usually developed by local and regional public (autonomous or commercial) enterprises but may also be internally managed.

In the **Slovak Republic** municipalities' economic activities include water supply and sewerage, removal of municipal waste and public transport.

In **Spain** municipalities' economic activities include water supply and sewerage, gas, public transport, abattoirs, central markets, commodity exchanges and mortuary services. These activities can be managed directly by the local authority itself, by an autonomous local body or by a company whose share capital is predominantly or wholly owned by the local authority.

In **Sweden** municipalities and county councils' mandatory economic activities include public transport, electricity, water and sewage, slaughter-houses, sea ports, airports and waste collection and disposal services. An increasing number of municipalities and county councils have business land development schemes. Municipalities are not allowed to undertake primarily commercial services, nor the manufacturing of goods to be sold on commercial terms; a number of municipalities and county councils have created a financial institution (Kommuninvest) providing savings, credit and investment services only for member municipalities and county councils (not the public or wholly owned private enterprises).

In **Switzerland** the questionnaire concerns communes and cantons. Each canton being sovereign, it can itself organise certain economic activities and make the necessary arrangements. It can also delegate tasks to the communes or to groups of local collectives. The latter can also take the initiative within the framework of cantonal legislation. It is not possible to distinguish between cantons and communes for certain economic activities because, in different parts of the country, some are the responsibility of one and some of the other. The following activities are undertaken through local authorities' internal structures: abattoirs, airports, water and sewerage, household and industrial waste disposal, cantonal banks, public baths, clinics, funerals and cremation, casinos, electricity, gas, district heating, hotels, homes for the elderly, car parking, skating rinks, restaurants, sports stadia, theatres, salt works, public transport (bus, train, boat, etc.), equipped industrial zones, cable telenetworks, etc.

In **Turkey** municipalities provide water and sewerage, public transport (bus), waste collection and disposal, gas and other public utilities, markets and abattoirs. These economic activities are undertaken by departments, by arms-length units or by municipal or intermunicipal enterprises.

In the **United Kingdom** various levels of local authorities are involved in economic activities. In two-tier non-metropolitan areas, district councils are directly responsible for waste collection whilst county councils are responsible for waste disposal and some areas of public transport (e.g. support to buses). These functions are administered by departments although the activities may be carried out by private companies (e.g. where refuse collection is contracted out). Both district and county councils have concurrent responsibilities for promoting economic development and for encouraging tourism. These responsibilities can be enacted through joint ventures with other authorities and with private companies, including contracting out. The term "economic development" is broadly defined to include a diversity of functions ranging from the creation of companies to promote specific ventures, of enterprise boards with more general economic development powers, of community associations, and even theatre management projects. In general, unitary Metropolitan District Councils and London Borough Councils are responsible for all the functions carried out by the two non-metropolitan levels of government.

In conclusion, it is clear that a wide range of economic activities are carried out by local governments, most commonly the provision of public transport, energy, water and sanitation, waste removal, and business land development schemes. In general, the smaller the scale of local authorities, the more likely it is that such activities will be undertaken internally by departments or externally by intermunicipal enterprises. Only the larger authorities have an effective choice between intermunicipal enterprises and municipal companies. In such cases, the choice is likely to be influenced by the nature of the activity. The more commercial the activity, the more likely it is to be provided by a free-standing municipal company.

tableau 1

2. Use of partnerships and equity participation

In **Austria** local authorities enjoy a wide margin of manoeuvre as to their economic intervention, which includes the use of partnerships and equity participation. Thus, the *Länder*, along with private enterprises, often act as contracting agencies, establishing infrastructural investments, such as sewage treatment plants, road construction, etc.; or purely commercial activities such as tourist attractions, private transportation services, etc. Moreover, partial privatisation of regional companies is planned. The City of Vienna holds equity in a number of mixed economy enterprises.

In **Belgium**, with some exceptions, equity participation by communes and provinces in private companies is prohibited by law. Regions are only allowed to hold a minority shareholding. Communes and provinces can have indirect partnerships with private companies through intercommunal enterprises. There is no legal basis for this in the Walloon Region. Partnerships are very common in electricity distribution, less common in the distribution of water and the collection and disposal of household refuse, and non-existent for the other activities listed under question 1.

In **Bulgaria**, as the private sector is still in the process of formation, cooperation and equity participation of local governments in private business is still in its initial stage. Some municipalities are beginning to contract out waste collection and transport services and participation with private companies is developing for their construction, commercial and manufacturing activities. In 1993 only a tenth of municipalities held equity shares in private companies. Equity participation is usually related to land and buildings.

In **Cyprus**, local authorities are not allowed to have equity participation in private sector businesses. They may, however, put out to tender public services such as waste collection.

In the **Czech Republic** the legal regulations do not stipulate the specific means and forms by which the individual economic activities shall be secured, whether through the internal structure of municipalities, through companies, through intermunicipal enterprises, etc.

In **Denmark**, unless otherwise stipulated in the legislation, municipalities and counties may decide whether to undertake economic activities themselves or arrange their delivery by private companies or by jointly-owned limited companies, the last being subject to maximum investment ceilings and to limits of determinative influence on the company by the municipal or county council.

In **Estonia** partnership with, and equity participation in, private companies is not very common since local authorities are generally not supposed to participate in commercial activities. Participation in private companies is mainly confined to public transport and provision of other public services.

In **Finland** partnerships with private sector enterprise are very limited. Participation in private companies is mainly confined to public transport and provision of other public services. Municipalities are not supposed to participate in commercial activities (production of goods and private services).

In **Germany** water, electricity, gas, district heating and public transport are undertaken in partnership with private businesses as, increasingly, are sewerage and refuse disposal. The other economic activities are generally undertaken through equity participation in private companies.

In **Greece** there are no limits on partnerships with, or equity participation in, private sector companies. Examples include tourism, development and construction projects, shipping operations and radio and television communication.

In **Hungary** waste collection may be contracted out to the private sector.

In **Ireland** in only a small number of cases are economic activities carried out in partnership with private sector companies, or through equity acquisition.

In **Italy** legislation does not make any distinction between partnerships and equity participation.

In **Lithuania** services such as cleaning and waste collection are purchased from private sector companies and local governments are shareholders of private enterprises involved in construction, commerce and services, transportation, etc.

In **Luxembourg** public transport and refuse collection are sometimes undertaken in association with private companies. Gas and electricity are provided through equity participation in private companies.

In **the Netherlands** municipalities are involved in partnerships with private companies for refuse collection and disposal (at intermunicipal level), business land development, manufacturing of goods, credit financing institutions and so on. Equity participation occurs for gas, water supply and electricity at the regional government level.

In **Norway** partnership with, and equity participation in, private companies occurs for electricity, local and regional passenger transport, community centres (usually owned by the municipality) and manufacture of goods (not of any significance, usually enterprises providing work for the handicapped).

In **Poland** communes can have partnership with or equity participation in private enterprises.

In **Portugal** combined public-private arrangements are uncommon for the economic activities. Concessions can be made for local communes to provide services, conditional upon public competition. Irrespective of activity and form of cooperation (e.g. links with private companies at regional or local level), communes must pursue the local public interest within their local functions.

In **Romania** local and regional councils can participate in private commercial companies without taking account of the form of capital and the nature of the activity which develops, but only for the pursuit of the local communal interest.

In the **Slovak Republic** small communities usually contract out their economic activities. Elsewhere limited and joint stock companies are established where the municipality is either the sole shareholder or has less than 50% of equity.

In **Spain** economic activities may be implemented in partnership with private companies or through equity participation with them, sometimes in consortia with other municipalities. Participation can take a number of forms including concessions, associated management agreements (where the municipality takes a stake in the economic performance of the private company), leasing companies and cooperatives whose share capital is only partially owned by the local authority.

In **Sweden** cooperation through partnership or equity participation is allowed but only for those activities which the municipalities or county councils have a competence to manage.

In **Switzerland** partnerships are, for example, in the form of concessions granted for bus services, restaurants, public bill-posting and exploitation of stone, sand and gravel pits. In each case, the concessionaire must abide by the rules fixed by the local authority. Shareholdings are the case in public utility enterprises: transport, energy (particularly electricity), free-ports, specialist waste companies, and so on.

In **Turkey** partnerships with, and equity participation in, private companies are allowed.

In the **United Kingdom** local authorities at all levels often cooperate with private businesses in promoting local economic development, through both equity participation in and partnership with private companies. The latter may take the form of a joint company.

In conclusion, it is clear that equity participation and partnerships are generally used interchangeably between countries for broadly the same range of economic activities, there being no overriding preference for one or the other by member states. In only a few cases is equity participation in private companies prohibited.

The distinction between equity and partnerships seems to be of less importance than the requirement that the economic activities in which local authorities are engaged are either statutory duties or are in pursuit of the local public interest.

3. The Existence and Source of Legal Powers

In **Belgium, Finland, Italy and Portugal** local and regional authorities do not have specific legal powers setting out their economic activities. It is either a matter of statutory duties (as in **Belgium** for distribution of low voltage electricity, for which only the communes are competent) or of considerable autonomy and discretion (as in **Portugal**, subject to the general limitations to their functions set out in the answer to question 1).

Economic activities in **Estonia, Finland, Hungary, Lithuania, Poland** and the **Slovak Republic** are regulated by national laws on local self-government. In general, these laws allow local and regional authorities to undertake economic activities by establishing, reorganising and liquidating enterprises.

In **Austria**, according to articles 17 and 116 § 2 of the Federal Constitution, a local authority is an independent economic operator having, as such, the right to possess, acquire and dispose all kinds of property and to run commercial enterprises, within the limits established by law. Additional legal basis may be found in the constitutions of the *länder*, in local authorities' regulations and in city charters. Economic intervention is limited however to activities serving the entire community and which are not provided by other means. Certain legal obligations are imposed on *Länder* and local authorities as regards a number of public services such as waste disposal or water supply.

In **Belgium** provincial and communal councils are only competent to regulate that which is of provincial or communal interest. This principle is written into the Constitution and developed in provincial and communal law. With the exception of street cleaning and electricity distribution (see above), the economic activities cited above make use of discretionary powers of the competent authorities. The Walloon Region also has discretionary powers.

In **Bulgaria** national legislation (the 1991 Local Government and Local Administration Act) gives municipalities the right of ownership, to perform economic activities and to invest property or surplus funds, except for the targeted grants from the central budget. The legislation also allows municipalities to establish municipal enterprises, to participate in joint ventures, provided that their liability does not exceed the amount of their equity participation. Powers are broadly enabling in giving local authorities rights to develop economic activities without specifying the directions of these activities or introducing specific regimes for the establishment and operation of municipal enterprises. The only restriction on the scope of municipal economic activities is contained in the Act on Competition Protection of 1991 which prohibits local governments from establishing monopolistic positions. The general provisions of commercial legislation are applied when economic activities are performed through municipal companies.

In **Cyprus** local authorities undertake the above economic activities through specific legal powers arising from both central legislation (empowering laws) and local legislation (Regulations). They are statutory powers.

In the **Czech Republic** municipalities have to operate in accordance with commercial codes and laws which relate to organisations financed fully or partially from the state budget.

In **Denmark** municipalities and counties are only allowed to undertake tasks if they have legal powers to do so, either in legislation or in case law.

In **France** direct financial assistance to private firms is controlled by specific legislation controlling the implementation of national economic plans. Other forms of economic intervention derive from general legislation concerning local self-government.

In **Germany** the self-government guarantee of the local authorities is enshrined in federal law and repeated in the Constitutions of the individual *Länder*. Local authorities have the right to determine how to fulfil their tasks. Legal restrictions result from the local government constitutions of the *Länder*. These contain provisions on the economic activities and on equity participation. Pursuant to these laws, the local authorities may, in the exercise of their functions, establish, take over or considerably enlarge businesses if the public purpose merits the enterprise and if the form and the size of the business is in proportion to the financial capacity of the local authority and to the expected demand. Statutory duties relate to water and sewerage and waste collection and disposal.

In **Greece** local authorities have specific legal powers to undertake their economic activities, whether as statutory duties (e.g. for water supply and refuse disposal) or as discretionary powers.

In **Ireland** all statutory powers originate from national legislation usually related to a particular service and of an enabling nature. In addition, apart from such specific powers, authorities also have legal powers of general competence to undertake any action they consider appropriate in the interests of their communities (including general economic activities).

In **Luxembourg** local authorities can undertake economic activities when they are consistent with specific powers given to the municipalities by the decree of 14 Decembre 1789 relating to their constitution.

In **the Netherlands** local authorities are authorised to undertake economic activities as long as these activities are within their field of competence. The power to undertake economic activities is found in the Constitution.

In **Norway** specific discretionary legal powers for local and regional authorities in their undertaking of economic activities is limited to the basic infrastructure of water, sewerage, waste collection and disposal. However, pollution law does impose statutory duties relating to sewage disposal.

In **Romania** local authorities have specific competencies to undertake the activities listed under question 1. These powers can be considered to have a local and regional origin and to be discretionary since they address local and regional needs and interests.

In **Spain** the Constitution and national legislation (1985 Law Regulating the Basis for Local Government) allow local authorities to pursue any kind of activity of public utility under free-competition conditions. The essential services listed in response to question 1 are mandatory, while in all other cases they are optional. Consistent with such generic laws, the Autonomous Communities may enact their own derived legislation.

In **Sweden** both discretionary powers and statutory duties are subject to national legislation. The activities within note 2a of the questionnaire are mandatory, with the exception of electricity.

In **Switzerland** cantons and communes may employ specific powers for their economic activities. Cantons often have discretionary powers but communes are in some cases obliged to provide environmental facilities such as water purification and incineration of household refuse.

In **Turkey** the Law of Municipality imposes obligatory duties on local authorities in respect of water and sewerage, gas, refuse collection and disposal, etc. Other economic activities are discretionary.

In the **United Kingdom** national legislation gives local authorities clear statutory duties to undertake tasks such as refuse collection and disposal. It also gives them certain discretionary powers, for example in promoting local economic development and in becoming involved in companies which are carrying out activities in respect of which the local authority has a power. However, they cannot use company participation to extend the range of their powers.

In conclusion, involvement in various economic activities may be specifically allowed for in law or simply reflect the statutory duties of local authorities. In only three countries are there no specific legal powers to undertake economic activities but this seems to make little or no difference to the involvement of local authorities. Liberal, enabling provisions provided in constitutional provisions for local self-government are not necessarily open-ended or any more favourable towards local authorities than is the case when economic activities are either specified in law or not specified at all. It is usual for a safeguard or limitation to be introduced, for example in prohibiting the accumulation of monopoly powers, in setting maximum absolute or relative ceilings on financial involvement, or in having to demonstrably be in pursuit of the local public interest. In having, in many cases, to be consistent with their municipal duties or within their specific competencies, local authorities are effectively not allowed to use participation with private companies as a means of extending the range of their powers.

4. Regulatory control over the direct creation of enterprises

There are no specific regulations controlling the direct creation of local and regional (including intermunicipal) enterprises in the **Czech Republic** (with the exception of the regulations stipulated above), in **Estonia, Finland, Ireland, Italy, the Netherlands, Portugal** (the possibility of local authorities linking with public and private companies is presently being studied), in the **Slovak Republic** and **Turkey**. In all of these countries the creation of local enterprises is controlled according to the general law on entrepreneurship whether in the public or private sectors.

In **Austria** the local authorities, as a self-administrating entity, are subject to control through federal and regional institutions. This control implies, at the central level, supervision on points of law; while at the regional level refers to business methods and economic administration. In any case economic intervention subject to private law is not covered by this control.

In **Belgium** local authorities determine their own regulations subject to the regional authorities' approval, within the legal framework established by federal and/or regional legislation. The creation of municipal enterprises requires the agreement of the local authorities, but their constitution must be approved by the regional authorities.

In **Bulgaria** it was not before 1991, with the adoption of the new Constitution and other laws, that a process of legal distinction between municipal and state property began. Given the transitional period for fulfilment of legal requirements for re-registration of municipal enterprises as business companies, existing municipal companies are established on the basis of three different legal grounds depending on the timing of their foundation. Municipal firms and enterprises incorporated before 1989 (about 10% of the total) were created under the old legislation, now repealed. Those established between 1989 and 1991 (about 30%) were founded under a 1989 Decree. Those established after 1991 fall under the remit of the new Constitution and the 1991 Commercial Code (about 60%).

In **Denmark** municipalities and counties are bound by case law in the creation of enterprises, approval by County Supervisory Committees (and sometimes by the Ministry of the Interior) being required where cooperation implies limitations of the competencies of the participating local authorities. All companies are regulated by the general legislation concerning limited companies.

In **Germany** regulations for setting up, taking over, expanding, participating in or selling economic enterprises vary between different *Länder*. In six *Länder* local authorities are only obliged to give notice and state that legal requirements are met. Authorisation is required in the other six *Länder*, although in two this is deemed to have been granted if no refusal or objection is forthcoming within two months. Express authorisation is required in the remaining *Länder*, although in two this is only required if it is intended to acquire shares in existing companies, form a new company or sell either.

In **Greece** the Municipal and Communal Code contains rules which regulate the creation, form, functioning, management, etc., of enterprises.

In **Hungary** the 1990 Local Self-Government Act allows local authorities to establish companies but, following further legislation in 1992, no further local government companies may be established as from 1 January 1994 and existing local government companies shall be transformed into corporations before 31 December 1996.

In **Lithuania** the establishment of local and regional enterprises is regulated by the laws on enterprises, on state-owned enterprises and on the enterprise register.

In **Luxembourg** no form of intervention by local authorities is forbidden provided that it is not contrary to the local or general interest. Investments by communes which are subject to approval by the parent authority are always appraised in the light of the opinion of the relevant ministerial department. Communes have a legal right to form joint authorities in order to achieve tasks of intermunicipal interest (e.g. for waste incineration, water supply, creation of regional industrial zones). Their objective is not to make a profit but to produce services at least cost for consumers. Creation of joint authorities requires a formal agreement by the deliberative bodies of the communes concerned which must be approved by decree of the Grand Duchy.

In **Norway** laws relate to the particular type of organisation, for example, local authority law and business law. Intermunicipal enterprises are subject to laws regulating the content of such agreements (e.g. composition and election to boards and delimitation of their powers) but which do not specify them in detail.

In **Poland** the creation of enterprises is regulated by public, commercial and financial law.

In **Romania** local and regional councils can legally create local and regional enterprises assuming that they are compatible with the interests and activities of their constituent authorities. Such enterprises acquire legal form or status.

In **Spain** when the activity is managed directly under the form of a private company one of the legal formulae for limited liability companies must be adopted and the company must act in accordance with commercial law. Regional enterprises are subject to the legislation of the relevant *Autonomous Community* which are consistent with the general provisions of state company law.

In **Sweden** the municipalities and county councils have a legal right to create enterprises, including joint enterprises together and with private companies, as long as the activity is within the municipal competence. This is regulated in the 1991 Local Government Act, municipal enterprises being created in the same way as wholly privately-owned enterprises.

In **Switzerland** regulations are derived from the constitutional rules for the canton, for example creating public transport undertakings. The law provides the overall framework and regulations determine the particular details. Similarly, there are also procedures for the creation of intermunicipal enterprises. There are also concordats between the cantons.

In the **United Kingdom** national legislation directly regulates the creation of enterprises, for example in prohibiting an extension of the range of local government powers through enterprises. It identifies three levels of involvement, namely controlled companies (where the authority has overall control through majority shareholding or appointment of directors), influenced companies (if the local authority controls 20% to 50% of votes and either has a business relationship with the company which accounts for 50% of the company turnover or allows it to occupy land leased or sold by a council at below market value) and minority interest companies (i.e. those which are not classed as influenced or controlled companies). Under the Local Government and Housing Act 1989, influenced companies were all subject to regulations as if they were part of the local authority. From 1 April 1995, new regulations have introduced a distinction between private sector influenced companies (i.e. those effectively controlled by the private sector) and public sector influenced companies, which are those where the local authority has effective control. Only companies that fall within the second category are regulated. This means that the company will be subject to special propriety controls.

In conclusion, there is no standard approach in terms of the extent and detail of regulations nor even in the creation of regulations themselves. Whether specific regulations exist or not, the tendency is for a medley of more generally applicable laws and regulations to indirectly influence the creation of local and regional enterprises by controlling their behaviour once established. In many countries actual or potential regulations are in a state of flux, consequent upon economies being restructured, particularly in creating a clear delineation between the public and private sectors or in pursuing privatisation programmes.

5. Regulations controlling the extent of ownership of equity

There are no specific regulations controlling the extent of ownership of equity in private sector businesses in **Austria, Bulgaria, the Czech Republic, Estonia, Finland, Ireland, Italy, the Netherlands** (however, the Municipality and Province Acts require permission to be sought from the supervisor), **Norway, Poland, Portugal, Romania, Slovak Republic, Sweden and Turkey**. In these countries, the laws controlling the extent of ownership of equity are effectively the same as those for all physical and legal persons and apply in all economic sectors. However, in most of these countries such activity is generally minimal, if only because of the lack of finances for such purposes. It is more often the private sector which is penetrating the public sector through privatisation.

In **Spain** there are no national regulations controlling the extent of ownership of equity in private companies in whatever sector. Any natural or legal persons may participate in equity holdings of companies. However, Autonomous Communities may make regulations for public participation in private companies.

In **Switzerland** it is more a question of political opportunity to participate in the capital of private sector companies providing public utilities.

In **Belgium** equity participation by local authorities is prohibited. However, this prohibition does not apply to the Regions, the Walloon Region for example being able to participate in these enterprises on condition that they are minority interests.

In **Denmark** besides the limitations on activities in which municipalities can become involved (see above) there is a limit of 10 million DKR which can only be exceeded with permission of the Minister of Industry. Furthermore, the investment must not entail a determinative influence in the company for the municipal or county council.

In **France** local authorities' shareholdings in private commercial companies and other businesses with profit-making objectives are prohibited by law. There are several exceptions. The Council of State can allow local authorities to acquire shareholdings of up to a third of the capital if they are within the public interest. Regions can freely participate in the capital of regional development and regional finance companies. These are organisations which

supply risk capital for small and medium companies not quoted on the stock exchange. Likewise, industrial and commercial property companies may be assisted by such means. Authorities may also hold shares in mixed local companies, in which they must hold at least half and not more than 80% of the capital. Regions, departments and communes are also legally authorised to participate in the capital (up to half) of guarantee companies especially in relation to newly-created enterprises.

In **Germany** the local government constitutions provide that the extent of ownership of equity in private companies must be geared to the financial capability of the local authority. Similarly, liabilities and obligations to make contributions must also be geared to financial capacity.

In **Greece** depending on the legal form of the enterprise, the extent of ownership of equity is controlled by the Municipal and Communal Code. Regulations apply in all economic sectors.

In **Hungary** the 1990 Local Self-Government Act states that the enterprise should not endanger the execution of the local government's statutory tasks. Moreover, its liabilities should not exceed the magnitude of its financial contribution.

In **Lithuania** the law on joint stock enterprises stipulates that whilst local and regional authorities can participate as legal persons, the nominal value of their equity holdings should not exceed 50% of the authorised capital of the enterprise.

In **Luxembourg** communes have the legal right to own shares (up to a fixed financial limit) in private sector companies carrying out works or providing services which are of local interest.

In **Sweden** if the activity is not within the municipal competence the municipalities and county councils are not allowed to involve themselves in any ownership at all. Within competent activities there are no limits on the extent of ownership.

In the **United Kingdom** the new regulations provide more flexibility for local authorities and their private sector partners, but also positive incentives for local authorities to restructure existing companies and to enter new joint ventures.

These new regulations can be summarised as follows:

- fewer controls on local authority participation in companies led by the private sector;
- measures to facilitate transfer of assets to local authority companies and the movement of such companies into the private sector;

- time-limited incentives for local authorities to dispose of specific types of assets to the private sector;
- widening the scope for revenue treatment of leases of non-housing property by local authorities;

The national government aims to further extend the role of the private finance initiative in the local government sector. Accordingly, proposals have been requested from local authorities and private sector organisations.

In conclusion, the incidence of no national regulations is greater for ownership of equity in private sector businesses (16 countries including Spain) than it is for direct creation of them (9 countries). In fact the majority of countries have no regulations regarding ownership of equity (15 out of 25). Where regulations do exist, they may limit the economic activities in which equity participation can take place consistent with local authorities' functions and responsibilities. They may also limit either the absolute amount of finance which may be so invested or the amount relative to the company or to municipal finances.

6. Regulations controlling partnerships with private sector businesses

Other than being variously subject to trade (commercial) and civil laws, there are no specific regulations controlling partnerships with private companies in **Austria, Bulgaria, the Czech Republic, Estonia, Finland, Germany, Ireland, Italy, Lithuania, the Netherlands, Poland, Portugal, the Slovak Republic, Spain and Turkey**. There has been some discussion in Finland of the need to restrict activities to those considered to be municipal activities and to prohibit municipalities from acting as guarantors. In the **United Kingdom** it is thought that there is no need for specific regulations controlling partnerships with private companies (e.g. for economic development projects).

There are also no specific regulations in **Sweden**, other than the activity having to be a legal concern of the municipality or county council, and **Romania**, partnerships only being allowed in areas providing for the local interest. The situation is the same in **Denmark**, except that local authorities are not allowed to act as guarantor for private companies. In **Switzerland** the response is the same as for equity ownership in that it is not proper to talk of rules (see above).

In **Belgium**, with the exception of intermunicipal enterprises, partnerships (like equity holdings) are prohibited by law.

In **France** local authorities can intervene in private sector companies under different forms. Authorities can give support to enterprises through indirect aid and through loan guarantees. The initiative lies not only with the regional authority, but also with each department and commune. The principal indirect aids include the sale or hiring of land and buildings to enterprises, aiding the commercialisation or promotion of local products (financing publicity leaflets and market surveys), professional training, etc. Bank loans to private individuals can be guaranteed provided that rules and limitations are obeyed and

always in proportion to the authorities' resources. Local help to businesses in difficulty and in support of basic rural services is subject to less strict conditions. The State remains responsible for general economic and political policy, agreeing jointly with the commune on the amount of subsidy. The overriding consideration is the protection of the economic and social interests of local populations.

In **Greece** the Municipal and Communal Code define the terms of cooperation with private sector businesses.

In **Hungary** the 1990 Local Self-Government Act states that the partnership should not endanger the execution of the local government's statutory tasks. Moreover, its liabilities should not exceed the magnitude of its financial contribution.

In **Luxembourg**, local authorities have the legal right to manage a certain number of affairs with complete autonomy. They have full responsibility in choosing the ways and means to fulfil their obligatory and discretionary duties. They can undertake tasks themselves directly, make use of a private firm or form partnerships amongst themselves or with private firms. But in all cases they remain politically responsible for the proper execution of their duties at least cost to the local community.

In **Norway** local and regional authorities may not be engaged in a partnership with joint and several liability if one or more of the partners are private.

In conclusion, more countries (20) have no regulations for partnerships than for equity ownership (16) or for direct creation of local and regional companies (9). However, the general expectation appears to be that partnerships, like equity ownership and direct creation of enterprises, should not be contrary to the roles and responsibilities of local and regional authorities.

7. Legal relationships between authorities and the management of private businesses where authorities are the majority shareholders

Local governments do not hold any special legal status, being in the same position as other shareholders regarding the legal relationship to the management of a limited company in **Austria**, the **Czech Republic**, **Denmark**, **Estonia**, **Hungary**, **Ireland**, **Italy**, **Lithuania** (once state-owned capital is tendered for shares), **the Netherlands**, **Norway**, **Poland**, **Romania**, **Sweden**, **Turkey** and the **United Kingdom**. The same is true in **Finland**, except that where the enterprise is closely involved in the work of the local authority, a link with management tends to be made via a committee or executive board. The same is also the case

in **Germany**, except that the local authority must be given an adequate influence in the supervisory board or body of the businesses in which it is a shareholder. **Portugal** also lacks set rules. Nonetheless, the general principles of public and private law are applicable, as are the general rules established by the Code of Commercial Companies (according to the type of business).

In **Belgium**, as already noted, shareholdings are prohibited by law. However, and within the confines of company law, regions may form agreements with commercial companies on a case by case basis reflecting the different situation which each faces.

In **Bulgaria** there is no explicit statutory relationship between local governments and the management of private companies where authorities are the majority shareholders. This relationship is realised through the universal form established by the commercial code for all shareholders. The local governments have not adopted any specific regulations of their own on this issue but such developments would be expedient given the restructuring of local government and the ongoing privatisation of activities.

In **France** local authorities are legally obliged to hold the majority of capital and have the majority voice in mixed local companies but otherwise the legal relationship follows the norm.

In **Greece** local authorities participate through their representatives in the management.

In **Luxembourg** communes (or consortium of communes) and the private enterprises define their relationships in signing a private law agreement.

In the **Slovak Republic** the legal relationship is determined by trade and civil codes and by existing social or other agreements which modify legal relationships.

In **Spain** the company's founding agreement may incorporate special internal provisions, whether structural or functional, which, without prejudice to third parties, are allowed as exceptional by the applicable company legislation.

In **Switzerland** public bodies can participate in limited companies under the Swiss code of obligations. Their representatives appointed to company boards (according to the authority's relative share) have the same rights and responsibilities as those elected at the annual general meeting and can only be removed by the local authority.

In conclusion, the overwhelming majority of countries use the same legal relationship between local and regional authorities and the management of private businesses in which they are the majority shareholders as is used for private shareholders. In only three countries (Luxembourg, the Slovak Republic and Spain) is there explicit provision for the modification of the normal legal relationship between managers and authorities.

8. Legal liability of authorities in the event of bankruptcy of businesses in which they have ownership arrangements

The general legal provisions on bankruptcy do not envisage any special liabilities of local governments following from their shareholdings or other ownership arrangements in **Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland** (where this issue has not arisen), **Italy, Luxembourg, the Netherlands, Norway, Portugal, Romania, the Slovak Republic, Spain, Sweden, Switzerland, Turkey** and the **United Kingdom**.

In these countries, it is almost universally the case that the kind of company chosen is decisive for the legal liability of the local and regional authorities in the case of company bankruptcy. In the case of limited liability companies, liability is limited to the authorities' share of the share capital. In the case of public limited companies, liability is limited to the authorities' share of the capital stock. Intermunicipal consortia cannot be established as limited companies and so the municipalities and counties are liable for the deficit of such companies. However, local and regional authorities are protected by law against bankruptcy or enforced collection. Whilst the property of a municipality is not subject to distraint it can levy taxes to finance any outstanding liabilities arising from company bankruptcy.

In **Austria** there are also no special regulations and only in exceptional cases a contingent liability may be considered. However, only those elements of the capital that can be separated from the property without impairment of communal interests may be transferred to creditors. Furthermore, the legal continuity of the local authority cannot be put into question as a consequence of a bankruptcy claim. The necessary financial means for a reorganisation, if it should be, are raised from the municipality property or by loans, guaranteed by the local authority.

In **Belgium**, rules governing bankruptcy are laid down in the Commercial Code, particularly part III: "bankruptcy, compulsory liquidation and suspension of execution".

In **Poland** the Act on Local Government makes the commune not responsible for the duties of enterprises, irrespective of the amount of shares possessed.

In conclusion, most countries afford no special protection against bankruptcy of companies in which local and regional enterprises have financial commitments. In general, a local authority would, at most, lose its shareholding and be called upon to meet any guarantees which it had given in relation to the company's liabilities. The extent of such liabilities is effectively limited where regulations limit the economic activities in which equity or other participation can take place and/or the absolute or relative amount of finance which may be so invested (see above).

9. The degree of integration of companies' and authorities' accounts

There is complete integration between the accounts of the two sets of organisations only in the **Czech Republic** and **Lithuania**, whether private companies are wholly or partially under the control of local and regional authorities. In these cases, enterprises do not have independent balance sheets. They are included in the consolidated balance sheet of the local authority. The same arrangement is in force in **Spain** for private companies partially under the control of local or regional authorities (i.e. they do not have to submit independent accounts). Only those private companies which are wholly under the control of a Spanish local or regional authority have to prepare independent balance sheets.

In **the Netherlands** enterprises that are part of the local or regional authority have their accounts fully integrated with the accounting system of the authority. If the enterprise is part of another body corporate then the authority is free to decide whether or not the accounts of the enterprise will be consolidated in its own accounts.

All of the other countries in which participation in private companies is allowed have independent balance sheets and are not included in the consolidated balance sheet of the local or regional authority. This is the case in **Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Norway, Poland, Portugal, Romania, the Slovak Republic, Sweden, Switzerland, Turkey** and the **United Kingdom**.

In **Finland** and **Sweden**, the Local Government Act provides that the annual report shall include information about municipal activities conducted in the form of a limited company, a foundation, an incorporated association, a non-profit association or a trading partnership.

Separation of accounting systems affects auditing arrangements. Private companies are generally subject to the accounting systems and controls of company law. However, they may also be subject to scrutiny by the auditors who are charged with the responsibility of scrutinising local authority accounts (as in the United Kingdom). In some countries, authorities which are majority shareholders may use their own auditors, as is the case in **Norway**.

Even where fully-owned or partially-owned enterprises have independent balance sheets, profits, losses or financial transfers must be written into the authorities' accounts in the same way as all municipal receipts and expenditures. Hence, an expense or income item is added to the authorities' revenue accounts. Likewise, the invested possessions or the value of shareholdings are generally included in capital accounts.

In conclusion, the accounts of fully and partially-owned private enterprises are generally separated from those of the local and regional authorities even when the enterprise's output is of strategic importance to the authority and even if a mission is delegated to an intermunicipal enterprise.

10. Central policies regarding economic intervention by authorities

In **Austria** the policy on economic intervention by local authorities is that they should, wherever possible, withdraw from commercial activities. On the contrary, they are responsible for the provision and maintenance of the necessary economic infrastructures. In any case, that public enterprises have no obligation to operate at cost recovery.

In **Bulgaria** there is no formally adopted and consistently implemented policy but the main features are engendering a clear distinction between municipal and state property and limitation of economic activities to strictly defined sectors related to local government competencies, including special programmes funded by central authorities such as those addressing unemployment. Subsequent to such delineations, privatisation of municipal companies is occurring elsewhere.

In **Cyprus** central government encourages and contributes towards the creation of the necessary systems through legislation and through the yearly budgets. For example, in respect of Improvement Boards and Village Commissions, central government contributes from half to five-sixths of the construction costs of water and sewerage systems according to their financial positions. In the case of municipalities, central government provides financial and credit facilities.

In **Denmark** although powers to undertake economic activities are generally restrictive rather than enabling, the abilities of municipalities and counties have been extended during the last couple of years, for example in respect of their cooperation with limited companies.

In **Estonia** the general policy is to privatise rather than to increase local authorities' economic intervention.

In **Finland** the main principle is that local authorities do not act directly as producers in the same way as private enterprises but instead arrange suitable conditions for enterprises. Such an enabling function relates, for example, to provision of facilities, know-how, planning,

communication and education. State subsidies are allowed for such purposes in order to improve employment conditions. Local authorities have considerable discretion in acting in these respects and methods vary considerably.

In **France** the state retains the responsibility for the conduct of the economy and the maintenance of employment. Hence, the economic intervention of local authorities must be the exception and must not counteract that of the state. Local intervention must also respect the principle of the freedom of commerce and industry. They must not inhibit free competition. Their interventions must respect the rules of regional development. Most of the laws date from 1982 following the prolongation of the 1975 economic crisis and look particularly favourably at businesses in difficulty or business in rural areas. Local authorities' actions must be innovative, dynamic and create employment whilst preserving local public finances. Some changes are in the offing.

In **Germany** the general policies regarding the economic activities of local and regional authorities are laid down in the statutes enacted by the individual *Länder* concerning the organisation and powers of each type of local authority. Some *Länder* have enacted more detailed provisions.

In **Greece** central government encourages local authorities' development of economic activities. They are free to develop such activities and the central government never interferes in their work. On the contrary, the institutional framework defined for the business activities of local authorities supports such initiatives. Furthermore, special inducements are also defined such as finance, tax reliefs and exemptions.

In **Hungary** local governments manage their own finances freely, without any restrictions. However, governmental grants (both specific and block) can only be used for their given purpose. Except for the possibility of transfer to another local authority, any construction projects financed through such grants cannot be sold or corporatised within 10 years. Public utilities, such as water and sewerage, may only be operated as a concession by private companies.

In **Ireland**, since 1991, the central government has adopted and implemented a policy of strengthening the general powers of local authorities and has given them greater flexibility and freedom. Hence, they have been given legal powers to promote the community interest. However, direct involvement in general economic activities is not one of the main activities of local authorities and operates on a very small scale. The main elements of local authority activity relate to infrastructure provision, roads, housing, sanitation, waste, environmental protection and other local amenity facilities.

In **Italy** in general the policies are to transfer economic resources to local authorities, either by obliging local authorities to spend on specific programmes or allowing local authorities to choose between the economic activities which they wish to implement.

In **Lithuania** legislation enables municipalities to establish state-owned enterprises, to participate as legal persons in joint stock companies, to regulate prices and tariffs of services to residents provided by municipal enterprises and to provide tax holidays at the expense of their own budgets.

In **Luxembourg** local authority's intervention is most often in the form of indirect assistance (e.g. price reductions for certain communal services). Shareholdings are rather exceptional, as are subsidies or loan guarantees. The central state provides subsidies, creates industrial zones and establishes companies within them. If necessary, the local authority leases the land. The central state intervenes, by means of subsidies, in the creation of industrial zones and in establishing enterprises within them. If necessary, the local authority provides the land on a long term lease.

In **the Netherlands** there is no central policy regarding local and regional authorities' economic intervention.

In **Norway** central policy regarding economic measures is that this is best taken care of through central government funds (e.g. regional funds) and financial institutions. Local authorities are prohibited from providing guarantees for business loans. They are not statutorily required to acquire shares in private businesses nor undertake other economic measures to reduce unemployment or secure needed growth in their areas. However, if local authorities do find financial resources for investments and other economic activities outside what is normally considered part of the public sector, central government sees these decisions as part of local autonomy. Most municipalities have established local budgets for supporting local businesses but they are usually not of a significant amount.

In **Poland** as noted above, profit-seeking economic activities are prohibited. New enabling legislation is presently being considered, whereby economic activities must contribute to satisfaction of the collective needs of the commune. Their management can be entrusted to the commune or else certain public tasks can be provided by the private sector. Communal enterprises can either be established according to a state-owned company formula, or as public municipal enterprises or as commercial companies. The first two forms are restricted to public utilities, the third for profitable activities. Communes may participate in mixed enterprises on condition that they have a dominant position, that there is a real unsatisfied need within local markets and that market economy is preserved.

In **Portugal** there have not been any clearly expressed policies. There has always been a general understanding, adopted by successive governments, that authorities must restrict their intervention to indirect forms and not to have a protagonistic effect on the activities of the private sector.

In **Romania** the level of intervention by local and regional authorities does not depend on the policies followed by central government since the local administrative system is based on the constitutional principle of local autonomy and decentralisation.

In the **Slovak Republic** the central state regulates a limited range of economic activities in order to determine maximum prices.

In **Spain** strictly speaking, there are no central government guidelines. In line with the Constitution, every territorial authority enjoys autonomy for the management of its own particular interests.

In **Sweden** central level's general policies are determined by regulations and case-law regarding discretionary powers.

In **Switzerland** the policies of the federal government relate to standards (e.g. of public transport) and, where necessary, the payment of investment subsidies in particular.

In **Turkey** central government has responsibility for determining the economic activities of local authorities and the rules by which they must operate.

In the **United Kingdom** central government has effectively delegated authority to local government to undertake economic development activity. At the same time, local authorities also have a key role to play in central government initiatives such as the Single Regeneration Budget which aims to promote economic development and regeneration through a broad range of measures involving public and private sector interests. Central government has concluded that local authority companies can serve a valuable role in implementing these policies but that the activities of these companies need to be regulated by legislation.

In conclusion, there is no clear, formal and consistently operated central policy in only 3 countries (Bulgaria, Netherlands and Portugal). In 2 countries (Germany and Spain) policy is delegated to the regional level, whilst in a further 7 countries (Finland, Greece, Hungary, Ireland, Italy, Lithuania, Romania) policy is clearly delegated to the local level as part of a policy of increased local autonomy. In 9 countries (Austria, Denmark, Estonia, France, Luxembourg, Norway, Sweden, Turkey and the United Kingdom) central policy is generally restrictive of local autonomy in this respect, either retaining major powers and decisions at the central level or delineating local discretionary powers through regulations or case law. The position in the remaining countries is not clear from the responses to the questionnaire.

Overall, therefore, countries seem to be evenly divided between those having adopted policies positively enabling local and regional authorities and those having more or less restrictive policies. The rest have no clear policies. The fact that a country has an enabling policy does not necessarily mean that local and regional authorities are actively involved in economic activities to any significant degree (e.g. as is the case in Ireland). Similarly, local

authorities may seek to fully exploit their restricted powers in engaging in economic activities in order to expand the local economy (e.g. in the United Kingdom). Hence the differences between enabling and restrictive policies may be more apparent than real.

11. Central controls over local and regional authorities' involvement in economic activities

In **Austria**, according to the Federal Constitution, all enterprises belonging to municipalities with more than 20.000 inhabitants and those in which such municipalities hold the majority of shares, are subject to compulsory control by the Court of Auditors. In addition to that, the government of the *Länder* supervises the legality of the local authorities' action which includes its economic interventions.

In **Belgium** the principle is to respect the autonomy of the communes and, more generally, their specific powers exercised legally and in conformance with the general interest. It is therefore through these indirect means that central controls are exercised by regional governments. Anything which is contrary to law, to statutes or to the public interest may be annulled.

In **Bulgaria** central government is able to suspend the execution of illegitimate acts by municipalities and refer matters to the court of law. It can also cancel illegitimate acts issued by municipalities. Local authorities are so heavily dependent on intergovernmental grants and subject to central regulations that the legal powers of local authorities to autonomously manage their economic activities seems illusory. The current structural reforms are expected to considerably reduce the economic activities of municipalities as privatisation and deregulation expands the private sector. However, forms of cooperation between local authorities and private businesses will expand and the activities directly related to the new competencies of regions and municipalities will stabilise in financial and organisational terms.

In **Cyprus** the central government supervises and controls directly or indirectly the operation of the activities through appropriate ministries or government services. Especially in the case of the two lower levels (Improvement Boards and Village Commissions) the central government, through the local authorities' budgets which it approves, take any necessary correcting measures so that the economic activities are self-supporting and satisfactory.

In **Denmark** the supervisory authorities (ultimately the Ministry of the Interior) may cancel decisions of the local and county authorities if those decisions are not in accordance with existing rules of law concerning procedure or content. The supervisory authorities do not have the power to impose another decision.

In **Estonia** there are no controls specific to municipalities' economic activities. They fall within the remit of control over economic activities of any kind.

In **Finland** there is no system of control based on legislation.

In **France** control of local authority decisions regarding their economic activities is exercised by the state's representative in the department or region. The state representative has to ensure that attention is paid to legal rules and regulations and may seek reviews, by administrative judges, of those local authority decisions which appear to the representative to be illegal. This particularly relates to local mixed companies under a 1983 law in which the local authorities have rights to participate, their management being subject to a specific control exercised through the regional chambers of audit.

In **Germany**, subject to giving notice or receiving authorisation (see section 4), there normally is no further specific control of the economic activities of local authorities. However, since the economic plan and financial statements have to be annexed to local authorities' budgets, these are subject to the normal supervisory control as to their legality. Hence a certain degree of control and supervision is ensured.

In **Greece** central government exercises legal controls on the decisions of the municipal and communal councils that concern the creation of local authority enterprises or their participation with private businesses.

In **Hungary** the Audit Office is entitled to check the financial and economic activities of local governments.

In **Ireland**, apart from major infrastructural services, the more general economic activities are matters for local authorities themselves and central government is not usually involved.

In **Italy** the Constitution establishes that the region's committee of control exercises legal control of the principal acts of provinces, communes and other local administrations. Control is intended to assure the regularity of local administrative actions in order to secure the public interest. New legislation provides only for control of the legitimacy of their actions, the merit being unquestionable. Budgets and accounts are subject to regulatory audit, most important for both documents. Verification of the internal consistency of budgets requires an examination of outturns with forecasts of revenues and costs over many years. Evaluation is in terms of disposable resources available for the realisation of programmes of activities and their expenditures. For the accounts, jurisdictional competence of the regulatory body (Chamber of Accounts) only relates to those of the treasurer. Regulation verifies the internal coherence and the legitimacy of results.

In **Lithuania** central government representatives exercise legal supervision over local and regional authorities and such supervision is expected to increase in the near future.

In **Luxembourg** the 1988 communal law relieved administrative control by reducing the number of acts subject to approval and instituted a jurisdictional control of guardianship measures such as non-approval of or cancelling the actions of the communes' bodies. The previous approval procedure has been completely abandoned. Annulment, possibly preceded by a suspension, is limited to cases of illegal decisions by the communes which conflict with the general public interest (e.g. an interest above the level of the commune or a national interest). The law doesn't reserve the regulatory powers to the supervisory authorities. Thus, as a general rule, annulment can be put before the appeals committee of the Council of State. Approval concerns the local authorities' actions set down in communal or special laws and falls within the remit of the Minister of the Interior but also of other relevant ministries. The 1988 law reinforced local autonomy in providing that non-approval decisions must be motivated and in instituting a cancelling procedure before the Council of State. Matters subject to approval relate to the budget, purchases, transfer of rights to real estate and leases above a certain threshold, payments or charges for water supply, gas, electricity, recourse to foreign capital, local tax decisions, and so on. Financial control is exercised by the Minister of the Interior who approves communal budgets and also has the prerogative to check and settle the accounts. He ensures that budget is in balance and that recurrent charges resulting from the extraordinary budget are in proportion to communes' financial resources. With regard to this, the pluriannual investment plan helps communes to better adjust their investments, by giving the possibility to highlight priorities and to choose optional investments taking in account their financial implications. Prior consultation with the supervisory authorities is welcomed by the communes; in general, this avoids conflicts or financial problems. The prior consultation procedure does not put any obstacle to the power and the obligation for the minister to refuse or reappraise commune's budgets where necessary.

In **the Netherlands** central government has no control over local and regional authorities' involvement in economic activities.

In **Norway** much emphasis is put on local autonomy. As long as the local and regional authorities operate within the law, the central government will not interfere with their decisions. An exception must be made for the extraordinary cases where the local economy is threatened to such an extent that the authority involved cannot meet its obligations. The central authority may then intervene and take direct control over local affairs. Local and regional authority budgets are checked by the central authorities in order to ensure that they are sound and within the law.

In **Poland** Regional Account Chambers control the economic activities of communes and their enterprises.

In **Portugal** control measures over local authorities' economic intervention are not defined.

In **Romania** control at the regional level comes in two forms. The legality of decisions relating to economic activities is subject to review by the prefect as representative of the national government in the region. Financial control is exercised by the Court of accounts and regional Chambers of account regarding the form, administration and use of local and regional financial resources.

In the **Slovak Republic** central government is not entitled to interfere in the decisions of the communities which are consistent with basic legal regulations appertaining to economic activities. They are, of course, subject to trade, hygiene, fire safety and other inspections.

In **Spain** controls relate to fulfilment of the necessary procedures by which decisions relating to the pursuance of economic activities are made. Reports must be prepared, open to a period of public scrutiny and subsequently approved by the Town Council. Budget accounts are audited in the normal way.

In **Sweden** municipal competence is defined in law and case-law. The central level does not have any special right to control the local level's involvement in economic activities.

In **Switzerland** cantons and towns, and even the Confederation itself, receive audit reports from the trustees charged with examining the annual accounts of autonomous organisations undertaking economic activities with the participation of local authorities. Official financial control services of towns and cantons analyse these reports in order to determine whether or not their management respects legal norms or conventions (e.g. concessions).

In **Turkey** central government permission is required for the issuance of domestic bonds and the securing of foreign loans (which are subject to central government guarantee).

In the **United Kingdom** generally, central government does not exert direct control over local government activities. For example, it does not specify how powers granted by Parliament should be carried out. However, activities in excess of powers are subject to judicial review, scrutiny by District Auditor, etc. In addition, there are centrally imposed limits on the scope and scale of local authority involvement in private companies. Proprietary and financial controls over some companies are designed to ensure that they are well managed and relinquish any accumulated debt with capital receipts.

In conclusion, only **Estonia, the Netherlands and Portugal** have no controls over local authorities' involvement in their economic activities, in the last case at least reflecting the very limited participation of communes in economic matters and so the lack of need for such controls. Otherwise almost all countries allow for the central (or sometimes regional) government to suspend, cancel or declare invalid any local authority decisions or acts which are contrary to law, to statutes, to procedures or to the public interest. The main criteria is the legitimacy of local initiatives rather than a different view of the merits of such actions. In addition, propriety and financial controls may be in force.

VI. SYNTHESIS

Whilst the range of economic activities undertaken by local and regional authorities can almost always be specified, detailed information regarding precisely how they are provided becomes less reliable the greater the autonomy of local and regional authorities in deciding their economic activities and the form in which they are undertaken.

Even where there is clearly developed legislation and legal precedent relating to economic activities, precise answers to the questions are only readily available where the law is exclusionary, i.e. forbidding activities. Where legislation is liberally passive, enabling autonomous local authorities to undertake economic activities in accordance with their own needs and resources, then there is less incentive for the central or federal level of government to require local and regional authorities to provide it with information and data in order for it to be collated and published in official statistical series.

Even if such data is required for regulatory purposes, it may not be in a form systematic enough to provide the required level of detail. This is particularly the case when the regulatory system is dependent on claims of malpractice or illegality being made by individuals or organisations, rather than it being one of systematic evaluation of periodic reports which local and regional councils are required to make to regulatory bodies. For example, authorities may be free to decide whether or not to undertake a particular economic activity but, should they decide to do so, it may have to be carried out in an efficient and effective way consistent with the public interest. The test of such propriety may be solely dependent on judicial review of complaints from members of the public.

Economic and democratic restructuring is another cause of data problems. Privatisation policies are currently redefining the divide between the public and private sectors and so are either affecting the range of economic activities carried out by local and regional authorities or the forms in which they are undertaken (e.g. directly or through partnerships with private companies). Several of the respondent countries have noted that the current situation, as depicted in the analysis of returns to the questionnaire, is likely to change (possibly quite dramatically) in the near future.

Whilst this is a common theme for most countries, East European countries in particular are radically revising the public-private split and creating new bodies of relevant legislation. Hence, the nature and scope of economic activities is changing so rapidly in some countries that current situations may be an unreliable guide to future scenarios.

There is a danger that the preceding analysis has given the impression of standardisation and similarity of approach when, in fact, a more detailed study would find dissimilarity and differentiation in terms of the form of delivery or other service characteristics. In particular, the common use of terms such as "water and sewerage" and "land development" hides considerable differences in terms of what precisely they mean in different countries and how they are undertaken.

Bearing the above in mind, the following conclusions can be drawn.

Economic activities undertaken by local and regional authorities

The survey has made clear that local and regional governments carry out a wide range of economic activities. The most common activities are the provision of public transport, energy, water and sanitation, waste removal, and business land development schemes. Smaller local authorities are more likely to organise their economic activities internally through normal departmental structures or, alternatively, manage them externally by means of intermunicipal enterprises. The larger local and regional authorities are able to choose between intermunicipal enterprises and municipal companies, their choice being influenced by the nature of the activity. The more the activity resembles a public utility industry (e.g. providing energy), the more likely it is to be provided by a separate municipal company.

Provision through partnerships and equity participation by local and regional authorities

The survey has made clear that equity participation and partnerships are used interchangeably between countries for broadly the same range of economic activities. There is no overriding preference for one over the other. Equity participation in private companies is prohibited in only a few cases. The requirement that the economic activities in which local authorities are engaged are either statutory duties or are in pursuit of the local public interest is of more importance than the distinction between equity and partnerships.

Legal powers of local and regional authorities

Involvement in various economic activities may arise out of local self-government principles or either be specifically allowed for in law or simply reflect the statutory duties of local authorities. The lack of specific legal powers seems to make little or no difference to the extent to which local authorities undertake economic activities. Constitutional provisions for autonomous local self-government are not necessarily more effective in stimulating the participation of local and regional authorities in economic activities than is the case when the law is more specific and restrictive.

Local or regional autonomy is usually qualified by safeguards or limitations, for example in prohibiting the accumulation of monopoly powers, in setting maximum absolute or relative ceilings on financial involvement, or in requiring economic activities to be consistent with the local public interest. In most cases, local authorities are not allowed to use their economic activities to extend the range of their powers. This is achieved by requiring their economic activities to be consistent with their municipal duties or within their specific competencies.

Regulations controlling the direct creation of enterprises by local and regional authorities

Not all countries have adopted regulations to control the economic activities of local and regional authorities. Whilst most countries do have such regulations, there is no universally-adopted approach for their extent, nature and content. Irrespective of the existence of such regulations, a variety of other more generally applicable laws and regulations exist which serve to indirectly influence the creation of local and regional enterprises. This is achieved by controlling their behaviour once established. Regulations are changing in many countries as they implement privatisation programmes.

Regulations controlling the ownership of equity by local and regional authorities

The majority of countries have no regulations regarding ownership of equity, much more than is the case for the direct creation of enterprises. Regulations which do exist usually limit the economic activities in which equity participation can take place (consistent with local authorities' functions and responsibilities) and the amount of finance which may be invested. Those limits put ceilings on either the absolute amount of money which may be so invested or the amount relative to the company's or authorities' finances.

Regulations controlling partnerships with private companies

Regulations are most common for partnerships and least common for the direct creation of local and regional companies. The general expectation appears to be that partnerships, like equity ownership and direct creation of enterprises, should not be contrary to the roles and responsibilities of local and regional authorities.

The legal relationship between authorities and private business managers

The legal relationship between local and regional authorities and the management of private businesses in which they are the majority shareholders is the same as for private shareholders in the vast majority of cases. Only three countries make explicit provision for the modification of the normal legal relationship between managers and authorities.

Legal liabilities for bankruptcy

Since, in the majority of countries, local and regional authorities do not hold any special position as shareholders, it can be expected that they face the same legal liabilities as private owners in the event of bankruptcy. Here, the nature of the company determines the legal liability of the local and regional authorities relating to company bankruptcy. Liability is limited to the proportion of the share capital in a limited liability company held by a local or regional authority. Liability is limited to the authorities' share of the capital stock in public limited companies.

Local and regional authorities are liable for the deficit of intermunicipal companies since they generally cannot be established as limited companies. The law protects local and regional authorities from bankruptcy or enforced collection and, besides, they can levy taxes to pay off any liabilities arising from company bankruptcy.

Most countries provide no special protection against bankruptcy for companies in which local and regional authorities have financial commitments. An authority would usually lose its shareholding and be required to meet any guarantees given in relation to the company's liabilities. However, the extent of such liabilities is often limited by regulations which define permissible economic activities or which limit the absolute or relative amount of finance which may be so invested.

Integration of accounts of private enterprises and local and regional authorities

The accounts of fully and partly-owned private enterprises can either be fully integrated with those of local and regional authorities or be kept completely separate from them. This may depend on the nature of the output of the private company and the extent of ownership by the authorities. However, even where separation is the case, transfers of subsidy or profit from one party to the other are normally entered into the accounts.

The separation of accounting systems for local and regional authorities on the one hand and the companies undertaking their economic activities on the other, leads to differing auditing arrangements. Private companies' accounts are audited within the remit of company law. They may also be subjected to the public sector auditing arrangements which apply to local and regional authorities'.

The accounts of fully and partially-owned private enterprises are usually separate from those of local and regional authorities. The link with the authorities' accounts is through the profits, losses or financial transfers which are entered into them in the same way as all receipts and expenditures. The value of capital stock or shareholdings are included in capital accounts.

Central/federal level policies

Central state policy regarding the economic activities of local and regional authorities in the member states varies substantially. Several countries have no clear, formal and consistently operated central policy and two delegate policy to the regional level. The remaining countries are broadly equally divided between the delegation of policy to the local level and retaining central control, either by restricting competence for decisions to the central level or using regulations and law to delineate local discretionary powers.

However, enabling powers do not necessarily mean that local and regional authorities are more actively involved in economic activities than their counterparts in more restrictive regimes. The real difference is the extent to which local authorities seek to use their powers to undertake economic activities.

Central/federal controls

In almost all countries, the central (or sometimes regional) government can suspend, cancel or declare invalid any local authority decisions or acts which are illegal, which conflict with statutory duties, which are in breach of required procedures or which are contrary to the public interest. The crucial test is the legitimacy of local initiatives rather than a differing political view of the merits of such actions. Propriety and financial controls may also be employed. A complete absence of controls over local authorities' involvement in their economic activities may simply reflect their minimal level of participation in economic matters.

Pragmatism versus ideology

The results of the survey highlight the pragmatic nature of direct provision, of partnerships and of equity holdings in private companies. They suggest that the models of intervention outlined above are too rigidly ideological and too mutually exclusive. In practice, an eclectic and pragmatic philosophy appears to be the norm, largely within the modified market models. This seems to be the case for both the Western and the Central and Eastern European States. The latter are in effect moving from a socialised model of intervention to a modified market form.

Such eclectic responses may reflect a shift from a mass production economy to a post-Fordist pattern of flexible specialisation based on a deconcentration of production as part of an increasingly pluralistic supply network. It has been aided by ongoing developments in information technology and communications. Just-in-time delivery systems are generating new patterns of linkage in local and regional economies which require increasingly strategic interventions and support by local and regional authority services. This process implies a much more active economic role for local and regional authorities in facilitating new forms and patterns of employment. This analytical framework accounts for the increased emphasis on training for skills, the provision of flexible public transport services between work and home, and so on.

RECOMMENDATIONS FROM THE STEERING COMMITTEE ON LOCAL AND REGIONAL AUTHORITIES ON ECONOMIC INTERVENTION BY LOCAL AND REGIONAL AUTHORITIES

A. Local authorities' present economic role

1. Economic action by local authorities has been increasing in recent years although it is not one of their usual activities. One of the present day's most serious ills -unemployment- and the need to increase their financial resources have impelled local authorities to take an interest in the economic circumstances of the enterprises based or wishing to set up in their areas. A proportion of local authorities' income is directly linked to economic activity at local level and this is an incentive to local councils to adopt whatever strategy is capable of strengthening the local economic fabric and reducing the gap between wealthy authorities and poorer ones.

A number of local authorities have consequently ventured into the economic arena, with varying degrees of success since the risks are not always properly assessed and there is not always the requisite professionalism.

The development of local economic initiative is part of combating unemployment (particularly among the young), job losses among the least skilled, depopulation in some municipalities, disparities between regions, and rising crime resulting from these various factors. Local authorities' role is not confined to the provision of services. They take active part in wider economic dynamics and their action produces significant effects on the national economy. However, local authorities have to be realistic and accept that many of them have too few resources to be able to pursue a policy of economic development unless on a basis of co-operation within a sufficiently large and homogeneous geographical area.

2. There are no precise rules enabling Council of Europe member states to draw a clear distinction between local public services which it is usual for a local authority to provide and other, private-sector economic activity by local authorities.

Nationally the border-line between these two types of activity is often unclear, and states draw it very differently according to their histories and political systems as well as the random factors to which economic activity is subject.

The "traditional" local services most commonly provided by local authorities are public transport, energy and water supply, sewage treatment, household refuse collection and treatment, and site development for economic and business enterprises. Local authorities treat such activities as absolute priorities in that they involve an obligation to maintain continuity as well as an element of solidarity and equality between citizens.

The division of local authority activities between public sector and private sector is constantly changing in one direction or the other.

From the standpoint of successfully carrying through any local development strategy, co-ordination between the various administrative levels and harnessing all the local economic forces are more important than how responsibility is apportioned between the public sector and the private sector.

A combined public and private sector enterprise may offer an effective model in so far as it makes for greater flexibility in the provision of public services.

3. Generally speaking, it is advisable that economic development which is excessively focused on local circumstances be avoided: globalisation of the economy and the interdependence, nationally and internationally, of all economic activities of any size cannot be ignored and affect even the local level.

The various forms of action need to fit in with national and regional development policy and planning. They must not contravene freedom of competition and, in the case of European Union member states, they must not be incompatible with Community aid.

Nor is it desirable for local authority revenue from a monopoly activity to be used to develop local authority activities in the competitive sector.

4. Whatever the type of activity (public-sector or private-sector) local authorities should avoid unbridled competition with one another to bring particular economic activities to their own areas; in the general and medium-term interest they need to act together since they require sufficient size to achieve sustainable development. The central authorities should take steps to promote such combined action and to discourage local authorities from starting up activities which are not viable in the long term on account of having too small a geographical basis.

Similarly, closer co-operation should be fostered between local and regional authorities; when several communities agree to engage in an economic development scheme and carry it through together, funds are likely to be more readily available and allocated more satisfactorily.

5. Economic and commercial activities require special skills, the ability to take rapid decisions, risk taking, management continuity and the vision to see the enterprise's long-term interests. The management of public enterprises should, therefore, be entrusted to people with the appropriate qualifications, keeping management and ownership separate when necessary.

B. Types of local authority economic action

6. In addition to directly carrying on economic activities, local authorities bring their influence to bear on the local economy in various ways, in particular direct and indirect financial aid and non-financial aid.

Direct aid:

- . Subsidies and other payments;
- . Loans and reduced interest rates;
- . Sale or let of land on advantageous terms;
- . Leases with purchase options;
- . Loan guarantees and sureties;
- . Minority share ownership in private business.

Indirect aid:

- . Provision and equipment of industrial estates and trading estates;
- . Surveys, consultancy services, management advice and advice on legal and tax matters;
- . Training/retraining facilities;
- . Help with provision of worker amenities (worker transport, canteen facilities);
- . Aid to maintenance of public services necessary to the local community;
- . Temporary provision of premises or common facilities as start-up aid to the young entrepreneur;
- . Aid to partnerships between schools and industry.

General aid

- . Trade fairs/exhibitions;
- . Development of high-technology centres;
- . Local research centres, network co-operation with other centres;
- . Aid to ownership transfer/purchase of an enterprise;
- . Quality of life (public services adapted to firms' needs, improvement of the natural environment, etc.);
- . The local authority's image.

No one type of aid is sufficient on its own to provide lasting support to local development. The local authority has to be able to offer a combination of different types of aid and to be able to adapt them constantly to structural and short-term changes affecting the economy generally.

Before taking any decision on such aid the local authority must assess the local situation (potential and weaknesses), take into account the many assets that are necessary for healthy, lasting economic development, and consider whether it can keep providing financial aid for a sufficient length of time given that results will not be immediate.

It must also weigh up the risks inherent in certain form of direct funding and concentrate on action which will bring about a lasting improvement in economic development potential and benefit as large a number of operators as possible.

C. Limits to economic action by local authorities

7. In nearly all the Council of Europe member countries local and regional authorities are allowed to engage in economic activity. In some cases there are restrictions or safeguards such as prohibitions on exercising a monopoly, ceilings (whether absolute or percentage) on equity participation, or a requirement that activities be reconcilable with the local authority's interests. Local authorities must stay within their field of responsibility and are allowed to engage in economic activities - in addition to those which are mandatory - only if they are compatible with their basic function. For that reason local authorities are sometimes not allowed to participate in ownership of private enterprises.

Most countries do not have any special procedure for dealing with the failure of an enterprise in which the local authority has a financial stake. The usual position is that if the enterprise fails the local authority loses its capital share in the enterprise and is required to honour its commitments to the enterprise.

8. In the case of European Union states any public authority economic intervention which affects trade between states and which may or threatens to distort competition by placing particular enterprises or types of production at an advantage is prohibited.

9. Where action by a local authority is of a private sector nature the authority should avoid awarding itself a monopoly of that activity and refrain from any action which might distort competition with private enterprises in the same line of activity.

10. As local authority economic involvement is not primarily profit-oriented, public interest may prevail when there are choices to be made. Before going ahead, however, the authority should make a thorough economic appraisal of the contemplated commitment, backed up by a technical feasibility study covering all aspects of the operation, and the economic appraisal can then be weighed against the social appraisal.

In the case of aid to enterprises in difficulty, the authority should have an economic and financial audit of the enterprise carried out so as to assess its reliability, competence, solidity and viability and its prospects of being set on a sound footing.

11. In taking on any financial risk the local authority must bear in mind all the commitments it has already entered into and its financial ability to meet them all without jeopardising the community's normal functioning and without possibly having to increase local taxation unduly.

The financial risk to the local authority from its partnership with or participation in the enterprise needs to be confined to the amount of capital invested.

12. The shares owned by a local authority in a private company competing with other private companies do not entitle that company to receive "disguised" indirect subsidies, if, for instance, it has incurred losses which necessitate its recapitalisation.

D. Legal forms of participation by local authorities

13. Council of Europe member countries use partnerships and equity participation interchangeably for broadly the same range of economic activities, there being no evidence of any clear preference for one or the other. In one or two countries the law prohibits any participation in private enterprises. It is by yoking their capabilities together that the public sector and the private sector will find the most appropriate way of developing the local economy.

14. The majority of countries have no regulations governing the size of local authority investment in private enterprises. Where such regulations exist, they restrict the economic activities in which local authorities may participate (such participation usually having to be consistent with their functions and responsibilities) and the amount of finance which may be invested. The restrictions put ceilings either on the absolute amount of money which may be invested or on the amount relative to the company's capital or in relation to local authority's financial capacity.

15. There does not appear to be any need for special legislation on enterprises whose capital derives wholly from local authorities since ordinary company law applies. When such enterprises are created, local authorities should duly evaluate the financial risks involved and should adopt a limited liability structure such as a company limited by share capital or limited by guarantee.

16. Whether in the case of partnerships, share ownership or direct creation of an enterprise there must not be any conflict with the local or regional authority's functions and responsibilities.

E. Regional development agencies

17. Action to develop the local or regional economy will not produce tangible results unless there is close co-operation between the various economic forces (enterprises, entrepreneurs, public authorities, chambers of commerce, associations or interest groups) and unless there is also consultation with the local community.

Local development agencies have been established for this purpose. They take various forms, in some cases specialising and in others covering a range of fields, and the role they perform complements the direct role performed by the local authorities. They may be divided into four types:

- . agencies providing support to business, industry and agriculture;
- . agencies responsible for the building of infrastructure;
- . agencies to promote economic activity;
- . agencies to provide training and further training.

Their funds come from various local, regional and national sources.

Their performance depends on the technical ability of those in charge, on management arrangements in which there is balanced representation of the various parties involved, on independence from government, on whether they are able to enter into lengthy commitments, and on political supervision of the results achieved.

F. Transparency of local authorities' decisions

18. Because of the financial implications for the community, any move to own shares, enter into a partnership agreement or set up a company must be the subject of a specific decision by the authority's deliberative body.

19. Management of any economic activity conducted by local authorities themselves requires a separate set of accounts showing the annual results.

When management of an undertaking is conducted through a partnership agreement or majority shareholding, the relevant budgetary and financial documents relating to the undertaking should be submitted to the authority's deliberative assembly and appropriate information about the undertaking should be appended to the authority's annual accounts.

20. Where an authority has capital invested in a company's activities, in all logic the company's annual balance sheet should have to be submitted to the authority's deliberative body at least for information.

G. Effectiveness of economic action by local authorities

21. It is difficult to judge how effective such action is. One mean of assessing this is in terms of preservation or creation of jobs over a period of at least five to ten years, the finding has to be that the results vary a great deal and that sometimes good results in one place are achieved at the expense of neighbouring communities.

Nonetheless the action is often necessary and enables the authority either to create the right financial conditions for carrying out work of benefit to the whole community or to alleviate, partly and in the short term, the effects of unemployment and job losses.

Local authorities undoubtedly have an economic role to play given that it is they who are closest to local enterprises; undoubtedly, too, they are the level of government best placed to allocate public aid.

Obviously, though, with unemployment and the unequal distribution of resources and activity, nationally and within Europe, the problem of creating the technological momentum necessary for economic development is one to which there is no lasting solution at the purely local level.

Local authority economic intervention has a social dimension whose cost and results are hard to assess in at least some cases. Nonetheless, the extent of such intervention makes it desirable for local authorities periodically to draw up an overall assessment of results (in quantitative and qualitative terms) so that the available public financial resources can be put to the best possible use.

H. Conclusion

Europe is always going to have to adapt its economic system to the constant change resulting from the world pressure exerted by other actors. The European production system is therefore going to have to evolve. Local authorities must therefore play their part in that evolutionary process even though they may not always have the necessary powers or may lack insight into medium-to-long-term world economic and industrial trends.

However, action by local authorities has to be harnessed to action at other levels of government and action in the private sector if Europeans are to enjoy a standard of living in the future that is both just and stable.