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EUROPEAN UNION POLICY AND LAW RELATED TO URBAN ENVIRONMENT

1. INTRODUCTORY REMARKS

Europe is the most urbanized part of the World. Today approximately 75% of the European Union (EU) population lives in urban areas, and generates 67% of the EU's GDP¹. It has a direct influence on the lives of millions Europeans and naturally has a substantial impact on environment. While living in urbanized areas has many advantages including social and economic benefits, one should also notice that it brings serious challenges to environmental aspect of their sustainability. The EU policy and law in assuring a quality urban environment are continuously evolving in order to keep it clean, green, healthy and human friendly. Although European cities still face many environmental challenges, it should be noted that over the last 50 years the urban areas in Europe have seen significant progress in terms of improving living standards of their inhabitants.

The European Union recognizes the role that cities play in the lives of many Europeans and has committed itself to act in this field. EU, and particularly the Directorate of the Environment of the European Commission (DG Environment) acts on improvement of the urban environment in a number of different ways². *Inter alia*, through the EU's general environmental legislation on clean air and water, low levels of noise, proper waste management, biodiversity, green infra-

¹ Comp. on the http://ec.europa.eu/regional_policy/sources, *Integrated Urban Development, Cohesion Policy 2014–2020*, factsheet; also D. Czischke, C. Moloney, C. Turcu, *Raising the Game in Environmentally Sustainable Urban Regeneration, Urban II Capitalisation*, (in:) *Sustainable regeneration in urban areas*, URBACT 2015; see urbact.eu/sites/default/files/soa_04-final-03.pdf, pp. 6–14.

² The Directorate-General for Environment is the European Commission department responsible for EU policy on the environment. It aims to protect, preserve and improve the environment for present and future generations, proposing and implementing policies that ensure a high level of environmental protection and preserve the quality of life of EU citizens. It also makes sure that Member States apply EU environmental law correctly and represents the European Union in environmental matters at international meetings.

structure, etc.; with the special action programmes like European Green Capital Reward³ and the European Green Leaf⁴ schemes which allow cities to demonstrate their environmental credentials and share their approaches with other cities; and through the development of a new tool that will allow cities to assess their environmental performance in comparison to similar cities, share good practices and experience, and to monitor their progress over time. There are also a number of other closely related urban environmental activities going on across other departments of the Commission, pertaining to urban environment in particular.

2. EU POLICY ON THE URBAN ENVIRONMENT – AN OVERVIEW

The most important elements of European Union approach to urban environment are included in a number of EU documents issued by EU institutions, especially by the European Commission over last twenty years. Among them, the following would be considered as those creating the policy of the EU on environmentally sound urban development, shaping the UE legal approach to the issue:

2.1. SUSTAINABLE URBAN DEVELOPMENT IN THE EUROPEAN UNION: A FRAMEWORK FOR ACTION⁵

In this document, the Commission points on fact that many of EU policies have an important urban relevance that cannot be ignored. In this document, the Commission is taking a step towards increasing of the effectiveness of EU policies by making them more “urban sensitive”. The Commission explains that there is no attempt to attain responsibilities for urban matters or solutions on the Union level. The EU framework for action for sustainable urban development aims at better-targeted action of the EU for urban problems fewer than four independent policies. One of them is to protect and improve the urban environment towards local and global sustainability. A Framework for action points on those environmental actions that lead to the improvement of urban environment, including urban energy management, transport, waste, air quality, water, noise and contaminated land; emphasis was placed on integrated environmental management approaches. The overall aim in those fields is the protection and improvement of the urban environment to improve quality of life, safeguard human health and protect global and local eco-system.

³ See ec.europa.eu/environment/europeangreencapital/index_en.htm.

⁴ See <http://ec.europa.eu/environment/europeangreenleaf>.

⁵ COM (1998) 65 final, Brussels October 28, 1998, Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and Committee of Regions.

2.2. THEMATIC STRATEGY ON URBAN ENVIRONMENT

It points on better implementation of existing EU environmental policies and law at Member States level through exchange of experience between EU and local authorities for achieving a better quality of life through an integrated approach concentrating on urban areas⁶. Principles contained in this document have been further reflected in other strategies as for example, Thematic Strategy on Air Pollution. The Strategy identifies the main issues most cities in Europe are confronted with such as poor air quality, high level of traffic, high level of ambient noise, poor quality built environment, derelict land, greenhouse gas emissions, urban sprawl, generation of waste and wastewater.

2.3. THE LEIPZIG CHARTER ON SUSTAINABLE EUROPEAN CITIES OF 2007

It is about commitments to make European cities healthy, attractive and sustainable place to live and work⁷. It is a document of the EU Member States that has been drawn up with the knowledge of the challenges and environmental backgrounds of European cities. The Charter considers integrated urban development policy as a best one for action aiming on improving and upgrading the physical urban environment⁸. According to the Charter's provision, a sound built environment and a modern and efficient urban infrastructure are closely linked. For this reason, it is necessary to improve existing building stock in deprived neighborhoods concerning their design, physical conditions and energy efficiency. In order to increase the sustainability of investments in upgrading the physical environment, they must be embedded in a long-term development strategy, which also includes public and private investments.

2.4. SUSTAINABLE DEVELOPMENT STRATEGY FOR THE EU

It calls for the creation of sustainable local communities with the high quality of life, attention to urban transport and the cooperation with rural areas⁹. The Strategy provides a European Union policy framework on sustainable development that takes into account the needs of the present generations without compro-

⁶ Communication from the Commission to the Council and the Parliament on Thematic Strategy on the Urban Environment, COM/2005/718 final, at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:128171>.

⁷ See http://eur-lex.europa.eu/legal_

⁸ According to the Charter, „integrated urban development policy means simultaneous and fair consideration of the concerns and interests which are relevant to urban development. Integrated urban development is a process in which the spatial, sectorial and temporal aspects of key areas of urban policy are coordinated”.

⁹ See http://eur-lex.europa.eu/legal_

missing the ability of future generations to meet their own needs. It rests on four separate pillars, among them environmental ones. The Strategy is based *inter alia* on the principle of solidarity within and between generations, policy coherence, policy integration, use of best available knowledge, the precautionary principle and the polluter pays principle.

The Strategy identifies a number of unsustainable trends on which action has to be taken. According to the Strategy, first of long-term specific action has to be taken on climate change. In addition, energy efficiency, renewable energy and transport have been considered subjects of particular efforts. The next are to limit the adverse effects of transport on environment, changing modes of production and consumption, enforcing sustainable management of natural resources, limiting major threats to public health and combating social exclusion and poverty as an evident threat to environment. In the 2009 review of the EU strategy for sustainable development, all of those objectives were listed again to be improved¹⁰.

2.5. THE LISBON STRATEGY

The strategy was launched in 2000 as a response to challenges of globalization. The objective of the Strategy for European Union was to become the economy respecting the environment¹¹. The renewed 2010 Lisbon Strategy sets as a priority the high quality of urban environment to make Europe a more attractive place to invest¹². The Europe 2020 Strategy aims at achieving a resource efficient Europe, towards a low carbon economy, increasing the use of renewable energy sources, modernizing transport sector, and similar actions that will affect cities and their environment¹³.

2.6. THE EUROPEAN UNION COHESION POLICY 2014–2020¹⁴

It is a document, which contains proposals from the European Commission for cohesion policy on integrated sustainable urban development. The proposals aim to foster integrated urban policies to enhance sustainable urban development in order to strengthen the role of cities within the context of cohesion policy of the EU. As a principle, the European Regional Development Fund (ERDF) should support sustainable urban development through integrated strategies that tackle the economic, environmental, climate and social challenges of the urban areas. The EU Member States are encouraged to make extensive use of financial instru-

¹⁰ *Ibidem*.

¹¹ See www.europarl.europa.eu/summits/lis1_en.htm?texMode=on.

¹² *Commission Staff Working Document*, Brussels, February 2, 2010, SEC (2010) 114 final.

¹³ See ec.europa.eu/europa2020/index_en.htm.

¹⁴ For details see http://ec.europa.eu/regional_policy/sources.

ments in supporting sustainable urban development. The reinforced integrated approach to tackle urban issues where more responsibilities and opportunities are given for cities is different from previous 2007–2013 Cohesion Policy.

2.7. 7TH ENVIRONMENTAL ACTION PROGRAMME

The European Commission has, in recent years, been increasing its focus on urban issues, as a response to the fact that by 2020 it is estimated that almost 80% of EU citizens will be living in cities. The political importance of the issue is demonstrated by its inclusion in the 7th Environmental Action Programme (7 EAP)¹⁵ under Priority Objective 8 – Sustainable Cities: Working Together for Common Solutions.

Specifically, the Action Programme states that by 2020 a majority of cities in the Union are implementing policies for sustainable urban planning and design, and that the Commission should develop a set of criteria to assess the environmental performance of cities, taking into account the economic, social and territorial impacts¹⁶. The Programme is to guide European environment policy until 2020. However, in order to give more long-term direction it sets out a vision beyond that, of where it wants the Union to be by 2050. It identifies three key objectives, i.e. to protect, conserve and enhance the Union's natural capital; to turn the Union into a resource efficient, green, and competitive low-carbon economy; to safeguard the Union's citizens from environment-related pressures and risks to health and wellbeing.

The 7th Plan of Action points to four elements that will help Europe deliver these goals: better implementation of legislation; better information by improving the knowledge base; more and wiser investment for environment and climate policy; full integration of environmental requirements and considerations into other policies. In addition, two horizontal priority objectives complete the programme: to make the Union's cities more sustainable and to help the Union address international environmental and climate challenges more effectively.

2.8. GREEN INFRASTRUCTURE STRATEGY

It is the EU strategy to promote the deployment of green infrastructure in the EU in urban and rural areas¹⁷, together with an enclosed document – Commission Staff Working Paper: Technical Information¹⁸. This is an important step in implementing the EU 2020 Biodiversity Strategy and specifically Target 2 requiring that

¹⁵ See <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013D1386>.

¹⁶ *Ibidem*.

¹⁷ *Communication from the Commission: Green Infrastructure (GI) (COM(2010) 249 final*.

¹⁸ SEC(2013)155 final.

by 2020, ecosystems and their services are maintained and enhanced by establishing green infrastructure and restoring at least 15% of degraded ecosystems¹⁹.

In the follow-up of the Commission's Green Infrastructure Strategy, the European Parliament adopted a resolution on Green Infrastructure²⁰. In addition, the Committee of the Region (COR) adopted an opinion on Green Infrastructure, and likewise the European Economic and Social Committee (ECOSOC)²¹. Green Infrastructure (GI) is contributing to all other targets of the EU Biodiversity Strategy, such as: 1) the full implementation of the Directive 2009/147 on the conservation of wild birds (so-called Birds Directive)²² and the Directive 92/43/ on the protection of natural habitats and wild fauna and flora (so-called Habitats Directive)²³ (target 1, and 2) to maintain and enhance biodiversity in the wider countryside and the marine environment (targets 3, and 4).

The European Commission had convened two Working Groups in order to develop European Green Infrastructure policy and provided concrete recommendations. The revised Working Group on Green Infrastructure Implementation and Restoration will develop documents supporting Green Infrastructure, in particular on national and regional level.

3. AN OVERVIEW OF THE EU LAW RELATED TO URBAN ENVIRONMENT

Over the past decades, the European Union has adopted a broad range of legislation related to environment. As a result, air, water and soil pollution has significantly been reduced. In addition, chemicals legislation has been modernized and the use of many toxic or hazardous substances has been restricted. Today, the EU citizens enjoy some of the best water quality in the world, and over 18% of EU's territory has been designated as protected areas for nature.

3.1. CLEAN URBAN AIR

Clean air is essential to our health and to the environment. However, since the industrial revolution, the quality of the air we breathe has deteriorated considerably, mainly because of human activities. Industrial and energy production, the burning of fossil fuels and the dramatic rise in road traffic – all contribute to

¹⁹ See ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm.

²⁰ See ec.europa.eu/environment/nature/ecosystem/.

²¹ *Ibidem*.

²² OJ 2010, L 20, p. 7.

²³ OJ 1992, L 206, p. 7.

air pollution in our towns and cities, which, in turn, can lead to serious problems for both health and the environment. Air pollution causes lost working days, and high healthcare costs, with vulnerable groups such as children, asthmatics and the elderly the worst affected. It damages ecosystems through excess nitrogen pollution (eutrophication) and acid rain. For these reasons, air quality is an area in which the European Union has been very active. Since the early 1970s, the EU has been working to improve air quality by controlling emissions of harmful substances into the atmosphere, improving fuel quality, and by integrating environmental protection requirements into the transport and energy sectors. As the result, much progress has been made in tackling air pollutants; however, despite the progress made, air quality continues to cause serious problems.

The EU's policy, included in the Clean Air for Europe (CAFE) strategy embodied in the Directive 2008/50/EC on ambient air quality and cleaner air for Europe²⁴, forms a policy framework for achieving safe air quality levels for all European citizens, especially for those that live in cities. The Directive, which harmonized standards for the air pollutants, requires the UE Members States to define air quality zones covering the territory of each Member State. Where standards are not met, the local and national authorities holding responsibilities for those zones must develop air quality management plans. According to the right to information, the Directive's provisions includes also mechanisms for informing citizens about the quality of the air, including situations when local air pollution reaches potentially unhealthy levels what needs an introduction of special measures.

Control over environmentally damaging emissions from the heaviest industrial air polluters in cities is in place through the following EU legal acts: the Directive on limitation of emission of certain pollutant into the air from large combustion plants (2001/80/EC)²⁵; the Directive on integrated pollution prevention control (IPPC) (2008/1/EC)²⁶; the Directive on the incineration of waste (2000/76/EC)²⁷; the Directive on the control of volatile organic compound (VOC) emissions resulting from storage of petrol and distribution from terminals to service stations (94/63/EC)²⁸ (volatile organic compounds, which contribute to ozone formation); the Directive on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations²⁹.

The EU has established European Pollutant Release Register, which provides access to emissions data reported from more than 24 000 industrial facilities³⁰,

²⁴ OJ 2008, L 152, p. 1.

²⁵ OJ 2001, L 309, p. 1.

²⁶ OJ 2008, L 24, p. 8.

²⁷ OJ 2000, L332, p. 91.

²⁸ OJ 1994, L 365, p. 24.

²⁹ OJ 1999, L 85, p. 1.

³⁰ See <http://prtr.ec.europa.eu>.

inter alia in order to inform the European citizens about emissions from major sources of pollution near their cities.

Motor vehicles are other sources of air pollution in the cities and towns. The EU law regulates vehicle emissions through directives covering cars and vans (70/220/EEC)³¹ and heavy-duty vehicles (88/77/EEC)³² where steadily issued amendments tighten emission standards. Also important is the Directive (2009/30/EC) as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions³³, which aims to further reduce polluting emissions from petrol by setting minimum quality standards. The Directive also addresses climate change by requiring minimum 6% reduction of greenhouse gas emissions from road transport by 2020.

The European Commission has carried out a comprehensive review of the existing EU air policy building on the 2005 thematic Strategy on Air Pollution. In December 2013, drawing on the conclusions from the review, the Commission has adopted a Clean Air Policy Package, consisting of a new Clean Air Programme for Europe with new air quality objectives for the period up to 2030, a revised Directive on national emission ceilings for certain air pollutants (2001/81 EC)³⁴, stricter national emission ceilings for the six main pollutants, and a proposal for a new Directive to reduce pollution from medium-sized combustion installations.

3.2. URBAN WASTE

According to the EU data, every year, each of the 500 million citizens living in the EU throws away more than half a ton of waste³⁵. The Directive on waste (2008/98/EC)³⁶ sets out norms for waste management across the EU. The Directive sets an order of priorities for waste management with the preferred option of waste prevention, followed by re-use, recycling, other forms of recovery such as energy from waste, and improved final disposal followed by monitoring. Waste should be managed so that it does not endanger human health, does not harm the environment, pose risk to air, water, soil, plants or animals, be a nuisance through odors or noise, or adversely affect the environment. By 2020, the EU Member States must take all necessary measures to ensure that at least 50% of paper, plastics, metal and glass from households and similar origins is prepared for reuse

³¹ Directive 70/220 on measures to be taken against air pollution by emissions from motor vehicles, OJ 1970, L 42, p. 16.

³² Directive 88/77 relating to the measures to be taken against the emission of gaseous pollutants from diesel engines for use in vehicles, OJ 1988, L36, p. 33.

³³ OJ 2009, L 140, p. 88.

³⁴ OJ 2001, L 309, p. 22.

³⁵ *Making our cities attractive and sustainable. How the EU contributes to improving the urban environment*, European Commission 2010, p. 12.

³⁶ OJ 2008, L 312, p. 3.

or recycled. By 2020, Member States also must take all ‘necessary measures’ to ensure that at least 70% of non-hazardous construction and demolition waste is reused, recycled or undergoes material recovery.

A number of waste streams have been targeted for special attention by various EU directives, such as the Directive on packaging and packaging waste (94/62 EC)³⁷; the Directive on end-of-life vehicles (2000/53/EC, as amended)³⁸, and the Directive on waste electrical and electronic equipment (2002/96/EC)³⁹. Most European cities now have special systems to collect, re-use, recycle and dispose of these types of waste. In addition, provisions of two other directives are to be mentioned as far as the waste management is concerned. The Directive on the incineration of waste (2000/76/EC) is applied in case waste cannot be re-used or recycled⁴⁰, and the Directive on landfills (99/31/EC) that sets guidelines for landfill management, including targets for reducing quantities of biodegradable waste⁴¹.

3.3. TOXIC FREE URBAN ENVIRONMENT

As far as the urban environment is concerned, one should mention the effects of exposure to hazardous substances because of their potential harm to human health. It should be stressed that the EU has set a new international standard for chemical regulation through the Regulation concerning the registration, evaluation, authorization and restriction of chemicals (EC/1907/2006)⁴². Further regulatory controls important for the urban environment are provided through the Regulation concerning the placing of plant protection products on the market (EC/1107/2009)⁴³ and the Directive establishing a framework for Community action to achieve the sustainable use of pesticides (2009/128/EC)⁴⁴. The directives’ provisions include measures to protect drinking water and to reduce pesticide use or risks in specific areas such as public parks and gardens, sports and recreation grounds, school grounds and children’s playgrounds.

3.4. SAFE URBAN WATER

The importance of clean drinking water for all EU residence has been one of the priorities of the European Union institutions. Since the 1970s, a series of

³⁷ OJ 1994, L 365, p. 10.

³⁸ OJ 2000, L 269, p. 34.

³⁹ OJ 2003, L 37, p. 24.

⁴⁰ OJ 2000, L 332, p. 91.

⁴¹ OJ 1999, L 182, p. 1.

⁴² OJ 2006, L 396, p. 1.

⁴³ OJ 2009, L 309, p. 1.

⁴⁴ OJ 2009, L 309, p. 71.

EU directives have been adopted to achieve objectives relating to water pollution and management. These have addressed, *inter alia*, the following issues: setting standards or practices to control emissions of substances to water; setting quality objectives for water and setting overall management structures for water. One of those directives is the Directive on the quality of water intended for human consumption (98/83/EC), which ensures that the water delivered to citizens through urban water supply system is safe to drink⁴⁵. According to its provisions, cities and towns must regularly monitor the quality of water delivered at the taps and keep consumers informed of the quality.

The clean urban environment is among the goals of the Directive on urban wastewater (91/271)⁴⁶. Its objective is to protect the environment from the adverse effects of urban wastewater discharges and discharges from certain industrial sectors and concerns the collection, treatment and discharge of domestic wastewater, mixture of wastewater and wastewater from certain industrial sectors (comp. Annex III of the Directive).

Four main principles pertaining to wastewater have been laid down in the Directive i.e. planning, regulation, monitoring and information. Specifically the Directive requires the collection and treatment of wastewater in all agglomerations of 2000 population equivalents; secondary treatment of all discharges from agglomerations of 2000 population equivalents, and more advanced treatment for agglomerations of 10 000 populations' equivalents in designated sensitive areas and their catchments. The Directive sets also requirements for pre-authorization of all discharges of urban wastewater, of discharges from the food-processing industry and of industrial discharges into urban wastewater collection systems as well as monitoring of the performance of treatment plants and receiving waters; and controls of sewage sludge disposal and re-use, and treated wastewater re-use whenever it is appropriate.

Although those provisions are the most costly of all of the environmental requirements to implement, the reductions in environmental pollution are significant. The Directive has helped rivers, lakes and coastal areas in Europe and has been important for meeting the health-based standards of the Directive on the quality of bathing water (2006/7/EC)⁴⁷.

Another EU legal act i.e. the Directive establishing a framework for Community action in field of water policy (2000/60/EC) has comprehensively expanded the scope and the objectives of water management and water protection both for surface waters and for ground waters. Its aim is to balance the competing demands for water from consumers, industry, agriculture and nature⁴⁸. The Direc-

⁴⁵ OJ 1998, L 330, p. 32.

⁴⁶ OJ 1991, L 135, p. 40.

⁴⁷ OJ 2006, L 64, p. 37.

⁴⁸ OJ 2000, L 327, p. 1.

tive absorbs the environmental objectives of several elements of legislation from the 1970s and 1980s, and repeals the old legislation step by step.

Other measures aimed at preventing pollution from contaminating our water resources include the Directive on environmental quality standards in the field of water policy (2008/105/EC)⁴⁹, the Directive on integrated pollution prevention control (2008/1/EC)⁵⁰, and Directive on the protection of groundwater against pollution and deterioration (2006/118/EC)⁵¹.

3.5. GREEN URBAN INFRASTRUCTURE

Green infrastructure is a very important factor for well-being of inhabitants of cities and towns, contributing to quality of life in urban environment. From the very beginning of its activities in the field of environment, the idea of the EU green spaces has been promoted through the EU legislation for nature and biodiversity protection.

The EU is committed to the protection of biodiversity and to preventing biodiversity loss within the EU by 2020. Over the last 25 years, the EU has built up a vast network of 26,000 protected areas in all the Member States and an area of more than 750,000 km², which is 18% of the EU's land area, known as Natura 2000, the largest network of protected areas in the world, and proves the importance the EU attaches to biodiversity⁵². The legal basis for Natura 2000 comes from the aforementioned Birds Directive and Habitats Directive, which both form the base for the EU's internal biodiversity policy.

3.6. URBAN NOISE POLLUTION

Environmental noise is the most common source of environmental pollution for city dwellers. As the demand for mobility grows, the use of cars, trains, and planes increases, and so does the level of noise. The Directive relating to assessment and management of environmental noise (2002/49) is the main EU instrument to identify noise pollution levels and to trigger the necessary action both at Member State and at EU level⁵³. To pursue its aims, the Directive focuses on three main activities: the determination of exposure to environmental noise; ensuring that information on environmental noise and its effects is made available to the public, preventing, reducing environmental noise where necessary; and preserving environmental noise quality where it is good.

⁴⁹ OJ 2008, L 348, p. 84.

⁵⁰ OJ 2008, L 24, p. 8.

⁵¹ OJ 2006, L 372, p. 19.

⁵² See ec.europa.eu/environemnt/nature/natura2000/index_en.htm.

⁵³ OJ 2002, L 189, p. 12.

The Directive applies to noise to which humans are exposed, particularly in built-up areas, in public parks or other quiet areas in an agglomeration, in quiet areas in open country, near schools, hospitals and other noise-sensitive buildings and areas. It does not apply to noise that is caused by the exposed person himself, noise from domestic activities, noise created by neighbors, noise at work places or noise inside means of transport or due to military activities in military areas.

The Directive requires that the EU Member States prepare and publish, every 5 years, noise maps and noise management action plans for: agglomerations with more than 100,000 inhabitants; major roads (more than 3 million vehicles a year); major railways (more than 30,000 trains a year); major airports (more than 50,000 movements a year, including small aircrafts and helicopters). When developing noise management action plans, Member States' authorities are required to consult the concerned public.

Member States' noise maps and action plans can also be consulted in the European Environment Agency⁵⁴. It is important to note, however, that the Directive does not set limit or target values, nor does it prescribe the measures to be included in the action plans, thus leaving those issues at the discretion of the competent Member State authorities. In implementing the Directive, the European Commission is supported by the Noise Regulatory Committee⁵⁵ and the Noise Expert Group⁵⁶, as well as the European Environment Agency.

3.7. TOWN AND COUNTRY PLANNING AS A POSSIBLE TOOL OF ENVIRONMENTAL POLICY

In general, towns and country planning (TCP) law regime is not particularly oriented on environmental protection. However, there are some areas of TCP regulation with relevance to environmental law like, for example, the system of development plans which ensures that environmental requirements are considered at the level of policy-making and the development control process, in which planning permission is required. It should be stressed that the town and country planning is a political system of decision-making of State's authorities as well as of authorities on the local level, which are supposed to make decisions by balancing economic, political, environmental, and social factors. Therefore, the TCP law is ultimately about procedures, ensuring that decisions are made correctly.

The system of development plans is of central importance in many areas of environmental law, especially when used in connection with other control measures. The practice shows, that although planning remains a political process, the concern is that a much more comprehensive approach to environmental require-

⁵⁴ See www.eea.europa.eu.

⁵⁵ See ec.europa.eu/environment/noise/directive_en.htm.

⁵⁶ See ENN-NOISE@ec.europa.eu.

ments is needed because the impact of planning control is in many ways incomplete or inadequate from the environmental protection perspective.

Although the Lisbon Treaty does not include provisions related to TCP principles covered by the EU primary and secondary law in relation to environment and eventually, in town and country planning, law could be divided as follows: 1) general principles stemming from the European Union primary law connected with environmental protection issues are: balance and sustainable development principle (Article 3 of TEU); subsidiarity and proportionality principle; integration principle (Article 5 of TUE); high level of protection and improvement of the quality of the environment principle (Article 3 of TEU); and 2) Particular principles of the EU policy on environment listed in Article 191 of TFEU) are as follows: precautionary principle, the principles that preventive action should be taken, that environmental damage should, as a priority, be rectified at source, and that the polluter should pay⁵⁷.

From the EU environmental protection law perspective, town and country planning system should be perceived as an anticipatory regulatory mechanism emphasizing prevention of harm to environment. The so-called SEA Directive on assessment of the certain plans and programs on the environment (2001/42) applies to a wide range of public plans and programmes (e.g. on land use, transport, energy, waste, agriculture, etc.)⁵⁸. The SEA plans and programmes in the sense of the SEA Directive must be prepared or adopted by an authority (at national, regional or local level) and be required by legislative, regulatory or administrative provisions.

The SEA is mandatory for plans and programmes which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste/water management, telecommunications, tourism, town and country planning or land use, and which set the framework for future development consent of projects listed in the so called EIA Directive on the assessment of the effects of certain public and private projects on the environment (2011/92 with further amendments)⁵⁹, or have been determined to require an assessment under the so-called Habitat Directive.

Broadly speaking, for the plans and programmes not included above, the Member States have to carry out a screening procedure to determine whether the plans/programmes are likely to have significant environmental effects. If there are significant effects, a SEA is needed. The screening procedure is based on criteria set out in Annex II of the Directive.

The SEA procedure can be summarized in the following way: an environmental report is prepared, in which the likely significant effects on the environment

⁵⁷ For more detailed analysis of the EU environmental policy and law principles see: M. M. Kenig-Witkowska, *Prawo środowiska Unii Europejskiej. Zagadnienia systemowe [European Union Environmental Law. Systemic Issues]*, Warsaw 2011.

⁵⁸ OJ 2001, L 197, p. 30.

⁵⁹ OJ 2014, L 124, p. 1.

and the reasonable alternatives of the proposed plan or programme are identified. Then the public and the environmental authorities are informed and consulted on the draft plan or programme and the environmental report prepared. Regarding plans and programmes that are likely to have significant effects on the environment in the another EU Member State, the Member State in whose territory the plan or programme is being prepared must consult the other Member State(s). On this issue, the SEA Directive follows the general approach taken by the SEA Protocol to the UN ECE Convention on Environmental Impact Assessment in a Transboundary Context⁶⁰.

The environmental report and the results of the consultations are taken into account before adoption. Once the plan or programme is adopted, the environmental authorities and the public are informed and relevant information is made available to them. In order to identify unforeseen adverse effects at an early stage, significant environmental effects of the plan or programme are to be monitored.

It should be noted that there are some differences between the EIA and SEA procedures. For example, the SEA requires the environmental authorities to be consulted at the screening stage; scoping is obligatory under the SEA; the SEA requires an assessment of reasonable alternatives (under the EIA the developer chooses the alternatives to be studied). Under the SEA, the EU Member State must monitor the significant environmental effects of the implementation of plans or programmes in order to identify unforeseen adverse effects and undertake appropriate remedial action. The SEA also obliges the EU Member States to ensure that environmental reports are of a sufficient quality.

4. CLOSING REMARKS

There is a simple conclusion arising from the review of EU policy and law on urban environment, which shows that the European Union is committed to make European town and cities healthy and attractive to live. A key feature of many EU's policies and laws on environment are measures aimed specifically at protecting the urban environment. The EU acts in a number of important ways in this field, setting policies, adopting legal measures, setting standards and providing financial resources for protecting urban environment.

The European Union policy and law in supporting, protecting and improving the urban environment is continuously evolving and developing. In general, the urban sustainable development promoted in the EU is about the needs of the present without compromising the ability of the future generation of urban dwellers to meet their needs. The concept of urban development is based *inter alia* on

⁶⁰ See www.unece.org/env/eia/documents/legaltexts/protocolenglish.

sustainable use of environment, also from the aspirations of the future generation perspective. Therefore, the urban environmental history, which is often neglected when it comes to assess the present state and plans for urban development, should be taken into consideration when it comes to the town and country planning. It looks very logical that lessons from urban environmental history have to be seen as a knowledge base for long-term horizons to current debates over urban development's consequences on environment, keeping in mind that historical approach offers perspective for the current policy maker in this matter⁶¹.

EUROPEAN UNION POLICY AND LAW RELATED TO URBAN ENVIRONMENT

Summary

The paper, based on policy documents and legal acts, presents an overview of the EU policy and law related to town and cities environment. The European Union recognizes the role that urban areas play in the lives of many Europeans and committed itself to act in this field. The EU and especially the European Commission (DG Environment) has been intensively acting on improving the urban environment in a number of ways. The overview of the EU policy and law on urban environment shows that the European Union is committed to make European towns and cities healthy and attractive to live. A key feature of many EU's policies and laws on environment are measures aimed specifically at protecting the urban environment. The EU acts in a number of important ways in this field, setting policies, adopting legal measures, setting standards and providing financial resources for protecting urban environment.

POLITYKA I PRAWO UNII EUROPEJSKIEJ W ODNIESIENIU DO ŚRODOWISKA MIEJSKIEGO

Streszczenie

Artykuł przedstawia zagadnienia polityki i prawa Unii Europejskiej w materii ochrony środowiska miejskiego. Unia Europejska, zwłaszcza Dyrekcja Generalna ds.

⁶¹ D. Schot, *Urban environmental history: what lessons are there to be learned?*, Boreal Environmental Research December 2004.

Środowiska Komisji Europejskiej, przywiązuje dużą wagę do poprawy stanu środowiska miejskiego. Przegląd polityki UE i regulacji prawnych dotyczących środowiska na obszarach zurbanizowanych pokazuje, że prawo UE tworzy zobowiązania, zarówno po stronie UE, jak i państw członkowskich, zmierzające do zapewnienia mieszkańcom miast europejskich zdrowych i atrakcyjnych warunków życia. Główną cechą polityki i przepisów prawa UE w dziedzinie środowiska jest zastosowanie specjalnych środków skierowanych na ochronę środowiska miejskiego. Unia Europejska wykazuje aktywność w tej dziedzinie, wyznaczając kierunki działań, przyjmując prawne rozwiązania, wyznaczając standardy oraz przewiduje finansowe środki przeznaczone na ochronę środowiska miejskiego.

BIBLIOGRAPHY

- Czischke D., Moloney C., Turcu C., *Raising the Game in Environmentally Sustainable Urban Regeneration, Urban II Capitalisation*, (in:) *Sustainable regeneration in urban areas*, URBACT 2015
- Kenig-Witkowska M. M., *Prawo środowiska Unii Europejskiej. Wybór i wprowadzenie. [Environmental Law of the European Union. Selected documents and introduction]*, Warsaw 2012
- Kenig-Witkowska M. M., *Prawo środowiska Unii Europejskiej. Zagadnienia systemowe [European Union Environmental Law. Systemic Issues]*, Warsaw 2011
- Schot D., *Urban environmental history: what lessons are there to be learned?*, Boreal Environmental Research December 2004

KEYWORDS

European Union, urban environment protection, environmental policy, environmental legal measures

SŁOWA KLUCZOWE

Unia Europejska, ochrona środowiska miejskiego, polityka dotycząca środowiska naturalnego, ochrona prawna środowiska