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Utility Services in several EU Member States

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FOREWORD

Utility services are activities of general social interest “which are performed in order to address certain needs of people involving their daily lives, in a place in which they are permanently located, where they work and perform their business activities”.¹ According to the current Montenegrin legislation², the performance of utility services involves providing of utility services and delivery of utility services, which are indispensable for the work and life of citizens, enterprises and other companies in the local government area. Utility services are performed in accordance with the territoriality principle, since they are performed in the territory of local self-government units or at the national level.

Utility services’ performance in Montenegro is governed by the Law on utility services. Given that the Law was adopted in 1995 in a different legal and political and economic environment, it has shown that in the new conditions, certain provisions of the Law create an obstacle when it comes to pursuit and development of utility services, both for public administration bodies, and public utilities. On the other hand, since that period, a set of new laws were adopted with which it is necessary to harmonise the decisions set in a regulation governing the issues involving performance of utility services. Therefore, on 6 October 2011, the Government of Montenegro determined the Proposal for a Law on Utility Services, which introduces a set of novelties.³ When it comes to compliance with European legislation and ratified international treaties, the explanatory statement of the Proposal states that primary and secondary sources of EU law do not regulate the conditions and manner of performing utility services.

However, “European legislation governing wastewater and water treatment, as well the area of services, procurement and tenders has a great effect on all utility services. By adopting the *Directive 2008/98/EC on waste*, the European Union has provided a legal framework involving the whole waste cycle, from generation to disposal with the focus on reuse and recycling. The Directive contains the main principles involving waste management which must be transposed into national legislation and harmonised with both national and municipal legal framework. The most important regulations within the EU legal framework in the field of water policy, are the following: *Directive 2000/60/EC of the European Parliament and Council (EU Water Framework Directive)* establishing a framework for Community action in the field of water policy and ensuring the protection for all waters, *Drinking Water Directive 80/778/EEC* aimed at human health protection through establishment of higher drinking water standards and *Directive 91/271/EEC concerning urban waste-water treatment*, which aims to protect surface inland waters and coastal waters by regulating collection and treatment of urban waste water and discharge of certain biodegradable industrial waste water.

Furthermore, a particularly important directive, in terms of financial and managerial functioning of Utility companies and their relations with local self-government authorities, as well as state authorities, is the *Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings* (amended by the Directive 80/723/EEC). The Directive is binding to public and private undertakings engaged in public interest activities and it encompasses all levels of member states public

¹ Pravna enciklopedija, sv. 1, Savremena administracija, Beograd, 1985, str. 640

² Zakon o komunalnim djelatnostima, Službeni list Republike Crne Gore br. 12/95

³ Obrazloženje Predloga Zakona o komunalnim djelatnostima

authorities.

Council Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors establishes general rules on public procurement policy, founded on the principle of freedom of movement of goods and services.”⁴

The aim of this paper is to provide information related to type and manner of performance of utility services in certain EU member states, as well as the manner in which ownership and management structure of business organisations in charge of performing utility services is regulated. Furthermore, it provides information whether there are any restrictions with regard to performing some of the aforementioned activities, however, requiring that within the ownership structure, the state has the majority or absolute ownership of the business organisation performing the activities. For the purpose of collecting data, the Research Centre submitted a questionnaire through the European Centre for Parliamentary Research and Documentation⁵ (ECPRD) network to EU member states parliaments containing questions defined in accordance with the research purpose. The Centre systematised and presented the information related to the subject, involving the following countries: Estonia, Croatia, Greece, Cyprus, Latvia, Lithuania, Hungary, Germany, Portugal, Romania, Slovenia, Sweden and United Kingdom.

The complete document in Montenegrin language can be found at:
http://www.skupstina.me/images/dokumenti/biblioteka-i-istrazivanje/Komunalne_djelatnosti_u_pojedininim_%C4%8Dlamicama_EU.pdf

⁴ Vlada Crne Gore, Ministarstvo održivog razvoja i turizma, Prioritetne aktivnosti u komunalnoj djelatnosti - Agenda reformi, septembar 2013

⁵ ECPRD Request no. 2682 *Utility Services in EU Member States*, November 10, 2014