

3.1.4 Decentralisation process

The State Union does not play a role in the territorial system of the Member States

The State Union does not directly impact upon the territorial government system within the Member States. The State Union level is therefore not discussed here. Because there is much commonality between the self-government arrangements of the Member States, in this section they are discussed in parallel.

3.1.4.1. Legal framework

The situation of local government in the State Union has become more complex after the political upheaval of the last decade, and the constitutional framework is still evolving.

Constitutional developments with regard to local government and territorial organisation

Municipalities had an important role in the Socialist Federal Yugoslavia

In the former Socialist Federal Republic of Yugoslavia, local government was based on very large municipalities vested with a general competence. According to article 116 of the Constitution of 1974, all power and management functions were performed at the municipal level except those reserved to Republics, Provinces or the Federation by the Federal Constitution. The break-up of the former Yugoslavia precipitated a strong centralisation in FRY as in the other newly independent republics, but by contrast there was no explosion in the number of municipalities. One aspect of this centralisation process was the division, by government decree in 1992, of the territory of the Republic of Serbia into 29 districts, and the creation of a district state administration taking over a number of tasks previously carried out by municipalities and exercising supervision over municipalities (see: Law on the Territorial Division of Serbia, Official Gazette of Serbia 47/91 and modif., Law on the State Administration, *ibid.* 20/92 and modif.)

This centralisation process moved the republics away from the socialist concept of self-government.

As compared to the SFRY Constitution, the 1992 Constitution of the Federal Republic of Yugoslavia did not contain provisions on municipalities; this matter was left completely to the Constitution of each Republic, but with the duty to implement local self-government (Art.6, par.3). Such a requirement disappeared from the Constitutional Charter of the State Union of Serbia and Montenegro (proclaimed on February 4th 2003), but this is more the consequence of a looser association between the Member States than of denying the principle of local self-government. However several provisions of the Charter might have impact on local government legislation and practice: the guarantee of minority rights (Art. 47-54), and the requirement of harmonisation of legislations and competencies in the Member States (Art. 51).

Serbia

Serbia is still under the Republican Constitution of 1990. This contains a chapter (Chapter 6) on territorial organisation, which provides for

autonomous territories and municipalities. A Constitutional Commission of the Serb National Assembly is discussing a draft new constitution, but at the end of November 2003 no agreement was expected in the short term. One of the most difficult issues is how to deal with the status of autonomous provinces and the particular situation of Kosovo.

*There are 2
autonomous
provinces: Vojvodina
and Kosovo &
Metohija*

Autonomous provinces (*autonomne pokrajne*) are formed in accordance with particular national, cultural and other characteristics of their area, and their territory is determined by law (Art. 108 of the Serbian Constitution of 1990). The statute is the highest legal act of a province (Art. 110); it determines the competencies and the organs of the province; it is subject to approval by the National Assembly of the Republic of Serbia. The province has rule-making power to perform its responsibilities, but no legislative power in the matters devolved (Art. 109). There are two Autonomous Provinces recognised in the 1990 Constitution of the Republic of Serbia – Kosovo and Metohija, and Vojvodina; however this status was not enacted in law for Kosovo and Metohija. From 1990 Chapter 6 of the Serbian Constitution applied to Kosovo only in theory. From 1999, Kosovo remains formally a Province of Serbia, but is administered by the UN (UNMIK). The question of the future status of Kosovo remains open and will be decided in due course by the Security Council of the United Nations.

The statute of the Autonomous Province of Vojvodina was adopted in 1991 by the National Assembly of the Republic of Serbia. In addition, a law on particular responsibilities of the Autonomous Province of Vojvodina (Official Gazette n°6, 7th February 2002) detailed and extended (as made possible by Art. 109 of the Constitution of the Republic of Serbia) the responsibilities of the Province, and its right to regulate them by ordinances; a number of them shall be performed as delegated responsibilities. The Province has no competence on the organisation of local government but the right to be consulted before any change in the territorial organisation (law of 2002, Art.59). This territorial autonomy can be qualified as a form of regional decentralisation.

*Vojvodina is claiming
greater autonomy*

However, a new statute, significantly called a “basic law”, is being prepared by the Vojvodina Provincial Assembly which decided on 23rd October 2003 to submit the draft to the public at some future date. This draft is a claim for a much greater autonomy: the Provincial Assembly should have legislative power (Art.3) and organise the judiciary (Art.119sq); the competence of the Province would include practically all domestic affairs (Art.80sq), including the organisation of the social security (under republican law however) and local government (Art.145 sq). Furthermore, the Provincial Assembly would include two houses, one of which would be a Council of Communities, the members of which would be elected by the respective ethnic communities, the other one elected by all citizens. Only the latter would exercise the legislative power, but the government would be elected by a common session of both houses. The proposed “basic law” seems to aim at enshrining ethnic discrimination in a constitutional framework. Its compatibility with the Copenhagen criteria needs to be closely monitored.

According to article 7 of the Serbian constitution, “the municipality is a territorial unit in which local self-government is exercised”. Article 113 determines matters in the municipal competence, and refers to the law and the statute of the municipality for other affairs. According to article 115, the statute may include “other questions of interest to the municipality”. The law may establish a municipality as a city when its territory includes several municipalities or towns (Art.117). Article 118 provides for the status of the City of Belgrade, which includes city district municipalities, to which part of the responsibilities of the city are assigned by the City statute.

The 2002 Local Government Act is generally in line with the European Charter on Local Autonomy

Whereas local government laws of 1991 and 1999 had a centralising purpose, the new Local Government Act of 14th February 2002 entails a new course oriented towards decentralisation, and is generally in line with the European Charter on Local Autonomy. Municipalities are governed by a Municipal Assembly, as representative body, and a President, as executive body; both are directly elected for four year terms. The Assembly elects a Municipal Council, the function of which is to co-ordinate its activity with the President and to oversee the municipal administration; the President appoints a Deputy (Art.30, 40, 43). The law retains the institution of *mesna zajednica* from the former Yugoslavia, as the lowest level of local self-government (for a village, a city district or neighbourhood) (Art.73-76). The Municipal Assembly may delegate assets and functions to *mesna zajednica*, which may be the owner of assets funded by voluntary contributions of its inhabitants approved by a local referendum (Art.73). The law provides for the representation of communities in ethnically mixed municipalities (Art.63), and organises the direct participation of citizens in decision-making (citizens’ initiative, referendum, meetings: Art.65-69). The city has similar institutions (Art.45). The law provides for a legal framework for the municipal administration (Art.58 sq) and the financial basis of local self-government (Art.78 sq). It does not restore the property rights of municipalities (all municipal properties, including municipal enterprises were transferred to the Republic by a Law of 1995 (Off. Gazette 53/95) leaving to municipalities the right to use, manage and lease these properties, including the right to sell the *usus* right). Furthermore, the law regulates the relationships between Republic, autonomous territories and municipalities, and provides for cooperation between municipalities, included with those of other countries (Art.115). Lastly it provides for the oversight of municipalities (Art.105-112) and the guarantee of self-government rights (including with compensation) by courts. The new law will be applied from the next local elections (Art.130).

Montenegro

Municipalities are the unique level of self-government

As in Serbia, municipalities are the unique level of self-government. The territorial division of Montenegro has remained unchanged since the law of 1990 on the division of the Republic in municipalities.

A local government reform has been pending for two years. It includes three bills: on local government; on the territorial division of the Republic; and on local finance. The local government bill is close to the

Serbian law, but displays some noteworthy differences. It details the substance and the legal regime of different types of municipal properties (Art.40 sq); there is no municipal council between the Municipal Assembly and the Mayor, but the Mayor may appoint Deputy Mayors with the approval of the Assembly (Art.48 and 76); the chief administrator has the same legal position as the Mayor and the Chairman of the Assembly, i.e. the position of a local official, and not of a civil servant although he is appointed by the Mayor with the approval of the Assembly (Art.82 and 93). The Constitutional Court has sole competence for judicial review on decisions or enactments violating self-government rights (Art.150-152). The bill on the territorial division seems to be a response to pressure to split up some existing municipalities creating a risk of sub-optimally sized units.

3.1.4.2. Institutional framework

In both Member States, municipalities are basic units of local self-government, and they largely follow the boundaries established under the former SFRY, with minor adjustments. In Serbia, territorial organisation is regulated by the Law on Territorial Organisation and Self-Government of July 1991. The Province is a level of territorial autonomy. Based on this Law, the full territory of Serbia, including Kosovo but not Montenegro, has been divided into districts (*okruzi*), as a jurisdiction of deconcentrated state administration

At present Serbia is divided into 18 districts, and, as a whole has 161 municipalities (not including Kosovo) of which 46 are in Vojvodina. The following table summarises the territorial organisation for the whole of Serbia and Montenegro.

Republics and provinces*	No. inhab.	Km ²	No. districts	No. municipalities
Serbia	7,498,001	77,755	18	160
Montenegro	650,575	13,812		21
* Excludes Kosovo				

With the creation of districts, the regions (*regioni*), which provided the forum for co-operation amongst municipalities, were suppressed.

Generally, municipalities are rather large units: on average more than 50,000 inhabitants in Serbia (45,000 in Vojvodina), but only 31,000 in Montenegro. At the end of the nineties, there were, in the whole FRY, only 10 municipalities with under 10,000 inhabitants, among which 4 were in Montenegro.

The City of Belgrade performs also the functions of a district; the capital city has 1,6 million inhabitants, and is divided into 16 city municipalities, each with its own assembly, tasks and budget. Niš, Novi Sad, and

Municipalities are generally large units

Kragujevač are the bigger cities; the first two contain each two municipalities, and so qualify as cities according to the new Law on Local Government (all four were cities according to the Local Government Act of 1991, but lost this status in 1999). Inner city municipalities must not be confused with *mesna zajednica*, which is a form of local self-government below the municipal level (for example, there are 66 in Kragujevač).

In Montenegro, a law of 1993 transferred the capital to Cetinje, the former residence of the King of Montenegro, a small historical city of about 20,000 inhabitants. Podgorica (the former Titograd), with more than 150,000 inhabitants, is the administrative and political centre, and is the only significant city. According to the Law on Local Government, Podgorica is the main city (*glavni grad*), whereas Cetinje is the capital city (*prestonica*). In addition to these, there are 19 municipalities. In practice, there are few differences between the capital and the main city, and the Law on Local Government is generally applicable to both.

Serbia

The main responsibilities of municipalities, according to the new Law on Local Government, can be summarised as follows. Municipalities are in charge, as their own tasks, of housing (building and maintenance), local public utilities (heating, public transport, water supply, sewerage, waste collection and disposal, green spaces, public lightning...), town planning, pre-school education, local roads and streets, culture and sport infrastructure of local scope, primary health care subject to further legislation, building maintenance and running costs of primary and secondary schools (although salaries are paid by the state). The same sharing of responsibilities obtains for social care, but municipalities may add to the legal obligations at their own cost. All together, this represents about 5.6% of GDP, which seems a reasonable level, considering that salaries for education and social care are paid by the state budget and that primary health care has not been actually transferred. For the first semester of 2003, investment expenditure was slightly in excess of 24% of the total expenditure of municipalities.

The implementation of the law of 2002 on Particular Competencies of the Autonomous Province of Vojvodina resulted in the transfer of a number of tasks from the districts to the Province e.g. major management functions such as education and health care. In addition, the new law grants the Province new decision-making and policy-making powers. Among these, the law distinguishes between competencies devolved to the Province (own competencies), and competencies delegated by the Republic to the Provincial authorities. The transfer of responsibilities gave rise to an additional financial transfer, voted by the Serb Assembly on June 19th 2002, of equivalent to €30m) from the budget of Serbia to the budget of the Province. According to the 2003 budget (as modified) of the Province it appears that education (including culture) is the major task: from a total expenditure of equivalent to €196m, more than equivalent to €138m are devoted to education, from primary education to university level,

including personnel expenses. The second most important budget line is the development fund of the Province, with nearly equivalent to €25m) Other important budgets are for the department of health and social policy (.476 billion dinars, equivalent to €6.6m) and the department of environment (equivalent to €7.9m). The Province has no authority over municipalities. The application of the law of 2002 raises the question of the future of the districts in the Province, as the law reduces their competences to a minimum.

Montenegro

The tasks of municipalities are regulated by the 1995 and the 1992 Law on the Transfer of Public Service Affairs to Municipalities. The latter delegated a number of tasks from the Republic to municipalities, on a ministry by ministry basis and provided for further transfers by subsequent laws. The Law on Local Government of 1995 enumerates particular rights and duties that municipalities have to exercise, by contrast with Serbian legislation, that enumerates fields in which municipalities have an authority, and refers to substantive legislation. Despite certain difference of approach in legislation, there is little difference between the Member States in the material competence of municipalities. The current interpretation of the law, despite the wording of article 16 of the Law on Local Government, of 1995, which includes a general clause, is that municipalities may not act in any matter without an explicit legal basis. Due to this interpretation, the lack of clarity of the distinction between own and delegated tasks becomes secondary, although it implies differences in the scope of state supervision. The new Law on Local Government includes a general clause (Art.30) but, unfortunately, it brings no clarity on the distinction between own and devolved and delegated activities.

3.1.4.3. Local financing

As regards local finance, Serbia and Montenegro are not at the same stage. Serbia has a working system of local finance, although some elements have to be improved; in Montenegro local finance is in need of reform.

Serbia

According to Article 109 of the 1990 Serbian constitution, the Provincial Assembly of Vojvodina shall “adopt the budget and the annual balance sheet”. In addition, funds necessary to finance the exercise of devolved competencies have to be transferred by the Republic. According to the law of 2002 on particular competencies of the Autonomous Province, the assets necessary to finance the competencies delegated to the Province have to be transferred under the authority of the Province (Art.65), and the funds assigned to institutions transferred shall be provided to the budget of the Province (Art.66). The Province will take over the employees assigned to activities transferred from the district offices of the ministries concerned (Art.67). These transfers have been implemented since the end of 2002. Otherwise, there is still no regulation on revenues collected by the Province. At present, the budget

*Serbia has a working
system of Local
Finance*

of the Province is mainly financed by transfers from the Republic calculated on the basis of the cost of the devolved and delegated functions. More than the equivalent of €144m, out of a total revenue equivalent to €195m, is provided by transfers from the Republic. They are assigned to salaries (equivalent to €106.7m) and to social transfers (equivalent to €18m). Own revenues of the province is estimated to amount to the equivalent of €44.3m. They mainly consist of income tax revenue (equivalent to €36m) and property tax revenue (equivalent to €7m).

As regards municipal revenues (including municipalities of Vojvodina), a major reform has been introduced from 2002 by the new Law on Public Revenues and Expenditures, voted at the end of 2001, the new Law on Local Government and the new Law on the Budget, both of 26th February 2002. As a result, municipal revenues increased from the equivalent to €475m in 2000 to the equivalent to €874m in 2002 and the equivalent to €922.7m in 2003 (modified budget of the Republic in 2002: equivalent to €3,016m).

Own revenues of municipalities, as determined under the previous legal framework, represented around 41% of the total revenues (without debt) in 2003. They consist of own taxes and communal fees; the latter represent 2% of total revenues.

The most important change in the reform was the introduction of the local payroll tax to be paid by companies as a percentage of their total outlay on salaries, at a maximum rate of 3.5%; all municipalities voted immediately the highest rate. This tax is expected to provide 20% of total municipal revenues in 2003.

The other own revenues of the municipalities are listed below, according to their decreasing share in municipal total revenues:

- the fee for the use of construction land,
- the fee for the development of construction land (related to public utility provision, these fees are collected by special purpose municipal companies, including water companies),
- the income from the lease of property managed by municipal governments (although the owner is the Republic),
- local communal fees,
- the so-called company fee;
- self-imposed contributions: representing under 2% of total revenues, they consist of a tax that local governments can impose on their citizens – through referenda - for specific programs and investments. It is entirely free from higher-level restrictions and is widely and frequently used by Serbian local

governments (71% of municipalities in 2002). It can be used to repay or maintain debt incurred to finance investments.

As a consequence of the reform of 2001-2002, municipalities have been granted wider discretion over the rates of fees.

Additionally, municipalities receive a share of several taxes collected on their territory but controlled by the Republic of Serbia, for an amount equal to 43% of total revenues ("unlimited shared taxes"). They receive 8% of the sales tax (but cities 10% and Belgrade 15%), and, since the 2002 reforms, 100% of several taxes on income. The reforms also increased the local government shares of a number of other taxes: the local government share of the property tax went from 25 to 100%; the share of the tourist tax was increased from 8% to 10%, and the shares of the agricultural tax, the property transfer tax (with a higher tax rate, collected on the transfer of any valuable property, not only immovable), the gift and inheritance tax, and the tax on income earned from the leasing of property, were increased from 50 to 100%.

Lastly, so called "limited shared taxes" are tax shares determined yearly by a special law and allocated to municipalities on the basis of need. This amounted to between 12 and 18% of total municipal revenues from 2000 to 2003. The resource base for these "limited shared taxes" is the tax on wages, and an additional share of the sales tax. Surprisingly, there is neither grant nor subsidy in the local finance of Serbia; this makes it difficult to assign resources for expenditures carried out locally in fulfilment of policies decided at higher levels.

According to article 30 of the Local Government Act 2002, the municipal assembly has to pass any acts for municipal public borrowing. According to article 58 of the State Budget Act 2002, local governments can borrow only for the capital investment part of their budgets. They can borrow for this purpose from domestic or foreign lenders, subject to meeting special criteria determined by the Government. The amount of borrowing depends on the capacity for repayment of the principal and interest of the local government unit from its own revenues; this implies an assessment of the financial situation that entails a central government control, although this is not explicitly mentioned in the law. Furthermore, the total short-term and long-term borrowing of a local government during the fiscal year may not exceed 20% of the total realised revenues during the previous year. Local governments may not issue guarantees.

Short-term loans can be granted by Serbia from its budget in case of budget deficit resulting from unbalanced movements in revenues and expenditures; they have to be repaid before the 30th of November of the fiscal year.

The local finance system of Serbia will have to evolve soon as a consequence of tax reforms that are going to be implemented. First, VAT will be introduced and sales tax abolished from 1st January 2004. Prior to this, sales tax provided 30% of the total revenues of

municipalities, but VAT cannot be shared on the basis of the local yield. Secondly, the Government is contemplating the introduction of a general personal income tax instead of the several taxes on income depending on the nature of the income. Thirdly, property tax, although fully assigned to municipal budgets, is controlled by the Republic and is under-collected (only 40% according to estimates). Lastly, equalisation is not working well partly because the legal criteria are not clear. However analysis of the existing disparities suggests the influence of political bargaining.

Montenegro

Montenegro system of local finance is about to be reformed

Less information is available on Montenegro. A reform of local finance is pending. The present system is regulated by the Law on Local Government of 1995 and the Government Revenues Act of 1996. The basic structure of the present system is close to the Serbian model.

Own revenues result from a number of taxes, fees and property revenues: a communal tax, a local administrative tax, self-imposed contributions¹, compensations for the use of municipal property, fees. Own revenues are in excess of 43% of total revenues (data of 1998).

Municipalities receive shares of the following taxes controlled by the state: property tax (50%), property transfer tax, residence tax, inheritance duties and gift tax, personal income tax (15% of the local yield). Other revenues ceded to municipalities are: revenues collected out of compensations for construction, maintenance and use of local roads and other objects of public importance, revenues from interests collected on bank deposits. Altogether these revenues amount to 49% of total revenues; the main source of revenue is the income tax share (78%), followed by the property tax (17.3%).

Lastly, there is a government support grant that is allocated to 11 under-developed municipalities (7.7% of total revenues of these municipalities). Otherwise there is no budgetary grant in the local finance system.

The budget law also regulates municipal budgets, but local government debt is regulated only through a provision on keeping a record of existing municipal debt, loans granted and short term borrowing (Art.42), and the obligation to maintain budget appropriations for the repayment of the debt (Art.43). The present local government finance bill provides for the possibility for municipalities to take long-term loans for infrastructure projects and purchasing major assets, in accordance with an approved capital investment plan; however, they are not allowed to borrow abroad; by contrast with Serbia they may grant guarantees (Art.62).

¹

They consist of a tax that local governments can impose on their citizens – through referenda - for specific programs and investments.

The draft Local Government Finance Bill is aimed at increasing the share of own tax revenues and diminishing the weight of self-imposed contributions and of tax shares. According to the bill, 10% of the local yield of the income tax should go to the municipality, but the municipality would be allowed to add a surtax at a maximum rate of 13% (15% in Podgorica and Cetinje), and 10% of the national yield would be channelled to an equalisation fund. The draft needs considerable improvement.

3.1.4.4. Conclusions

Although there are similarities, Serbia and Montenegro are evolving differently. Both have escaped the fragmentation of local government that has plagued many countries of the region. Future reforms should try to preserve this legacy.

Serbia

Serbia has a sound system of local self-government and local finance, including a high level of financial autonomy. The large size of municipalities will make it possible to decentralize more functions, if the government finds it appropriate. The survival of former Yugoslav institutions such as the mesna zajednica as a form of decentralisation within municipalities and the self-imposed contributions will be useful to strengthen local democracy and accountability in the new context.

Nevertheless some reforms are necessary at the municipal level. The first one is to clarify municipal property rights. Although municipalities may use and lease freely the properties at their disposal, only the Republic may dispose of them. In European countries municipalities usually have full property rights, although their properties may be subject to specific constraints. Serbian legislation should strengthen the guarantees of the property rights of municipalities, even if the Republic should maintain certain controls over their management. Secondly, the Serbian Government has to replace local government revenues that are going to disappear with the planned tax reforms. This could be done either through tax shares or budgetary grants. The second solution would give the opportunity to introduce grants either as matching grants for specific functions or for equalisation. The present equalisation system is not satisfactory because of the lack of transparency. Due to the large size of Serbian municipalities, disparities are not too deep, and should permit simple equalisation criteria.

The Statute of Vojvodina is an issue

Another issue is the Statute of Vojvodina. The implementation of the Law on Particular Competencies of the Autonomous Province of Vojvodina (2002) increased the autonomy of the Province in major policy domains such as education and health care. This accumulation of responsibilities should be accompanied by a new Law to clarify and develop the Province's own revenue powers; further discussion is also needed concerning the Province's internal administrative structures. The Statute of the Province would need to be re-examined in the context of the Constitutional debate in Serbia. The draft "basic law" of the Province is a claim for very substantial autonomy and could be potentially in

conflict with the Copenhagen criteria especially in terms of minority rights and ethnic representation.

Montenegro

The distinction between own, delegated and devolved responsibilities needs to be clarified.

In respect of municipal property, the situation in Montenegro is, to some extent, similar to Serbia. However, Montenegrin legislation recognises the existence of municipal property. On the other hand, there are pressures to divide some municipalities; the argument is that in some municipalities separate settlements have developed, in particular on the seaside, and these should be recognised as municipalities in their own right. These arguments seem not justified as the existing local self-government institutions within municipalities are able to leave sufficient autonomy to these settlements, and to facilitate consideration of their needs and interests in municipal government.

The present draft law on local finance suffers several important drawbacks. If the proposal for a municipal surtax on personal income is approved, it would be inadvisable to leave its introduction to the discretion of municipalities. It would also probably be a mistake to give up the voluntary contributions since they seem to be widely accepted.

