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**Legislative Tools for Preserving Town Centres
and Halting the Spread of Hypermarkets and Malls Outside of Cities**

**(Land Use Legislation
and Controls of Conflicts of Interest in Land Use Decision Making)**

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I. Introduction:

Throughout Europe, the past few decades have been characterized by - retail sprawl - the spread of hypermarkets and of large shopping malls outside of city centers. Dominance of cars, increasing suburbanization and leisure time, and increasing affluence, leading to demand for wider shopping selection, have undermined the traditional center city focus of West European shopping.

In response to these trends, legislation controlling the location of large retail development has become widespread. Such legislation been motivated by the objectives of: maintaining the vitality of urban centers, maintaining the accessibility of shopping for all income and age groups, and reducing traffic and its associated adverse effects on the environment.

The purpose of this report is to describe this legislation, with the aim of providing concepts and models for CEE planners and organizations which are interested in addressing retail location issues and curbing developments which generate sprawl and have negative environmental effects on urban areas. **It is up to the readers to figure out which types of laws might be most effective in their country, subject to the following thought and caveat: laws which provide planning discretion based on social and environmental concerns are less likely to work in favor of public interests in political environments which lack of strong tradition of giving serious weights to these concerns and of seriously considering public inputs.**

In addition to discussing retail location legislation, this report describes West European and U.S. legislation aimed at curbing conflicts of interest in the public planning decision making process. Such measures are essential in order that personal interests do not override public interests in the course of public land use decisions, including decisions on applications to construct major retail centers. Such measures are a prerequisite to the effectiveness of any regulations that grant discretion to local councils or planning boards.

Other critical concerns, **which are beyond the scope of this report**, include issues related to public participation in review of retail development applications and the transparency of the public review process.

II. Regulation of the Development and Location of Hypermarkets and Shopping Malls in

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Western Europe¹

Until the 1990's, the location of retail growth was largely unregulated. Now, regulation of the location of new major shopping facilities in order to achieve environmental, social, and commercial objectives is standard. Great Britain, France, Germany, Netherlands, Ireland, Denmark, Sweden, Norway, and Belgium have adopted legislation which directs the construction of new hypermarkets and shopping malls into central city areas. Other nations which have adopted national measures which control the location of shopping malls out of these concerns include: Finland, Greece, Spain and Sweden. A significant number of new measures have been adopted within the past five years.

¹ For an overview of West European legislation and of the history of large-scale retail development as of 1995 see Davies (editor), Retail Planning Policies in Western Europe (1995, Routledge, London) (297 pp.). For a more recent description with excellent analysis see Guy, "Controlling New Retail Spaces: The Impress of Western Policies in Western Europe", Urban Studies, Vol. 35, Nos. 5-6, 953-979 (1998)

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Comments from the retail industry and experts reflect the impacts of the new legislation. For example, a 1998 report by Price Waterhouse (a major advisor of retail developers) states: "Today governments in much of Western Europe are tightening regulations aimed at protecting the small. In the process, they are imposing a nearly impossible cost on large retailers interested in green field development."² One of the principal commentators on retail policies noted: "... control of off-centre retail development has now become a major political issue in western Europe."³

The typical reasoning behind such legislation is set forth in a 1999 report of Great Britain's Environment, Transport and Regional Affairs Committee which concluded that:

... out-of-town supermarkets ... have reduced the vitality of town centres, ... have led to the closure of corner shops in towns and villages; ... have produced urban sprawl and the loss of much valued countryside close to towns ...⁴

On a local level, a typical sentiment is that:

Commercial centres, such as town centres and local shopping areas, do not only serve a consumer function but provide a vital social focus for every community. Shops are weekly, even daily, meeting point for many people particularly in rural communities. In isolated rural areas the closure of shops can have a detrimental effect on the sustainability of the community. Shops in villages increase the

² Price Waterhouse, "The Retail Environment 2010" (1998)
(www.ideabeat.com/reslib/pricewaterhouse/euroretail2010/page5.cfm)

³ Guy, "Controlling New Retail Spaces: The Impress of Planning Policies in Western Europe", *Urban Studies*, Vol. 35 (Nos. 5-6) 953-979, 962 (1998)

⁴ Select Committee on Environment, Transport and Regional Affairs, Second Report, "Environmental Impact of Supermarket Competition" (www.publications.parliament.uk/pa/cm/199900/cmselect/cmenvtra/120/12006.htm).

Also see Department of Environment, Transport, and Regions, "The Impact of Large Foodstores on Market Towns and District Centres" (Sept. 1998) The study includes a literature review (Ch.2). A summary of the report is accessible on the internet ()

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range of services available and so attract people to the area helping to reverse rural depopulation.⁵

A report by the Norwegian Ministry of the Environment on its adoption of strict curbs on retail development outside of urban centers, explains:

In 1999, Norway adopted a national policy decision establishing a moratorium on shopping centres outside the centres of towns and settlements.

This decision was implemented to ensure a societally desirable policy on locating large shopping centres until county plans are adopted that can manage this at the regional level. The objectives are to strengthen existing centres in towns and other settlements, to avoid trends that result in unnecessary urban sprawl and to prevent increasing dependence on cars and poor access for people who do not have a car available.

The background for adopting this decision was the strong growth of large shopping centres that were constructed along the main roads outside towns and had many negative effects. Town centres and local centres were drained of retail trade turnover, and other services also gradually moved outside towns. The population is becoming increasingly dependent on cars for shopping and other errands. The dispersal of urban functions consumes large quantities of land, requires substantial transport and is difficult to serve by public transport. It is also sociologically inappropriate for existing buildings and land in town and local centres to be used inefficiently at the same time that considerable investment is being made in new land and installations.

⁵ Wear Valley District Local Plan, p. 85 (March 1997)

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A key feature of Norway's national urban policy is to stimulate lively centres in towns ...Urban centres are an important meeting-place for residents, retail trade and other business, as well as cultural and social activities.⁶

West European legislation governing the construction of hypermarkets and large shopping centres may be divided into three general categories.

| <u>Types of Legislation Controlling Retail Sprawl</u> |
|---|
| Laws which require consideration of the impacts of major retail projects on town centers and the environment in the course of reviewing permit applications and mandate that center city preservation has a priority in retail policy |
| Laws which require consideration of the impacts of proposed commercial projects on existing retail shops |
| Laws which prohibit the construction of large retail outlets and shopping centers which are more than a specific size outside of center cities |

These alternate approaches are based on differing concepts. The first two approaches provide for analysis and discretion, while the third establishes prohibitions based on objective and largely indisputable measures.

Nearly all of the legislation provides for the possibility of regional and/or national level

⁶ Planning for Retail Trade in Nordic Countries, a joint publication of the Ministries of the Environment of the Nordic Countries. Available on the web page of the Danish Ministry of the Environment (www.mem.dk)

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review of decisions by local governments on retail development permit applications. In the following discussion the policies of Great Britain, Germany, France, Denmark, Ireland, Netherlands, and Norway are briefly described.

A. Great Britain -

Over the past decade British policy has evolved in the direction of increasing control over the placement of shopping centers in order to maintain the viability of city centers and address environmental concerns.⁷

Concern over the spread of large out of town retail developments emerged in the 1980's. During that period, British policy direction consisted of statements which provided for the consideration of the competing interests of preserving town and city centres, while not inhibiting competition by restricting retail development. There was a presumption that a project should be permitted if it fit within the objective planning rules and the burden of proof was on those who wanted to demonstrate otherwise.

In the 1980's and early 1990's national policy largely favored laissez-faire in retail development. British policy towards retail development has been set forth in Policy and Planning Guidance 6 (PPG 6), which is issued by the Department for Transport, Local Government and the Regions.⁸ In 1988, the first version of PPG 6 was issued. It stated that it was not the function of the planning system to inhibit competition and directed that consideration of retail impact should be undertaken only in exceptional circumstances. In many cases, the central government reversed local planning decisions which denied permits for shopping centers.

⁷ For discussion of the British experience, in addition to the other reports cited in this section, see Davies, *supra* note __, Guy, *supra* note __, and "Review of Experience in UK", Retail Planning Guidelines (Report submitted to the Irish Minister for the Environment and Local Government by Roger Tym and Partners, London) (www.environ.ie/press/pa55t70.html)

⁸ (<http://www.planning.dtlr.gov.uk/ppg/>)

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In the early 1990's, pressure for change was supported by studies that demonstrated that developments out of the center harmed traditional shopping centers and by new national policies aimed at curbing the use of private vehicles. In 1993, PPG 6 was substantially revised to support the preservation of city centers. Furthermore, local authorities were encouraged to take positive actions to preserve town centers. A specific “impact” test was set forth. However, in order to reject a project local authorities were required to demonstrate that the adverse impact on a town center would “undermine the vitality and viability of that centre which would otherwise continue to serve the community well.”

In 1996, PPG 6 was amended to require that local governments take into account national criteria for the placement of shopping centers. These criteria include the objectives of:

1. Sustaining and enhancing the viability of town centers,
2. Ensuring viability of a wide range of shopping choices for everyone,
3. Achieving sustainable development,
4. Achieving environmental objectives,
5. Reducing automobile travel⁹
6. Preserving the vitality of rural economies

Also, PPG 6 was amended to require that local governments use a “sequential approach” in selecting sites for new retail development. First a finding has to be made that there is need and capacity for further retail developments; then town centre options have to be considered before less central sites are considered. PPG 6 now states that:

... in drawing up their development plans, Local Planning Authorities should, after considering the need for new development, adopt a sequential approach to selecting sites for new development. Both Local Planning Authorities and developers selecting sites for development should be able to demonstrate that all potential town centre options have been thoroughly assessed before less central sites are considered for development for key town centre uses. If, however, there is no need or capacity for further development, there will be no need to identify additional sites in the town.¹⁰

Furthermore, any proposal for a retail project in excess of 20,000 sq. meters shall be

⁹ This objective is set forth in PPG 13 (March 1994)

¹⁰ PPG 6, Para. 1.10.

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submitted for review by the Secretary of State.¹¹

Attractive design of new shopping facilities has been seen as a critical element to the success of efforts to aid center city vitality. Pursuant to that objective PPG6 directs that:

¹¹ Circular 15/93 - Town and Country Planning

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the design of proposals for retail development should have proper regard to their relationship with their surroundings and should, where appropriate, develop and enhance local character. Design should avoid presenting blank frontages to town centres or being inward looking. Designs which add interest and variety, and which reflect the local context, should be encouraged.¹²

Since the 1996 revision of PPG6, further modifications and reforms have been made. In addition, the Government has advocated that local planning authorities take a more proactive approach by identifying sites for supermarkets and using compulsory purchase powers to assemble the sites needed for their construction.¹³ Commentators have noted the critical need for local governments to take an active, rather than merely regulatory, role in order bring about the implementation of the new retail objectives.¹⁴

In the past decade, there has been continuing discussion and research about the impacts of PPG6 including discussion about whether the location of supermarkets in town centres would lead to a significant reduction in the use of cars and whether relaxing planning controls would bring about greater price competition.¹⁵

¹² PPG 6, Paras. 2.33-2.40.

¹³ Select Committee, *supra* note __, para 11.

¹⁴ Mappin and Allmendinger, "Retail Development", *Introduction to Planning Practice* (Ch.8) pp.191-214 (2000, Wiley & Sons, West Sussex, England)

¹⁵ See e.g. The lengthy and detailed report of the national Competition Commission on supermarket competition and planning issues. Competition Commission, [Supermarkets: A report on the supply of groceries from multiple stores](http://www.competition-commission.gov.uk/reports/446super.htm) (Oct. 2000) (www.competition-commission.gov.uk/reports/446super.htm) (600pp.)
Institute for Retail Studies (University of Sirling), [Publications on Retail Planning in 2000](http://www.nrfp.org/bibliog2000.pdf) (Feb. 2001)(www.nrfp.org/bibliog2000.pdf) (60 pp.)
planning bibliography of the University of Nottingham, SP07 (Structure Plans & Retail Planning)

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To place the overall impact of the new British policies in perspective it should be noted that three years after the adoption of the revisions to PPG 6 policy the Select Committee of the Ministry of Environment reported that there is exceptionally widespread support for the new standards:

(www.nottingham.ac.uk/sbe/planbiblios/bibs/strategic/07.html) (9 pp.)

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Existing planning policy guidance on Town Centres and Retail Developments is widely supported. The evidence is clear: leading experts on planning and retailing, planning associations, local authorities and almost all supermarkets themselves support the central thrust of policy laid down in PPG 6. We have rarely seen so much support for a Government policy.¹⁶

B. Netherlands¹⁷

For decades, the Dutch have severely limited the development of hypermarkets outside of city centers through a combination of policies. After a flurry of construction of retail centers on the periphery of cities in the early 1970's, restrictive legislation was adopted.

From 1976 through 1986, the retail planning element of spatial planning had to be accompanied by thorough research on the effect of new shops, regardless of whether or not there were proposals for significant retail development. This requirement imposed a substantial burden, since the required information was not contained in census data. "If out-of-town centres had been proposed, the obligatory research would have shown a threat to the town centre, that would have been contrary to policy ... and the [plan] would have been disapproved."¹⁸

In the 1980's, the impact research requirement was abandoned as overly costly and not particularly reliable. However, localities were required to produce a complete inventory of their retail facilities. In 1984, the category of shops that could be constructed outside existing shopping areas was expanded to include furniture and builders' merchants, if it could be shown that they could not fit into existing shopping areas. In 1990, the class was expanded to include

¹⁶ Select Committee on Environment, Transport and Regional Affairs Committee, Environmental Impact of Supermarket Competition, Second Report (Jan. 2000) (www.publications.parliament.uk/pa/cm199900/cmselect/cmenvtra/120/12006.htm)(length 20pp.)

¹⁷ The EU compendium of spatial planning and policies, The Netherlands (1999) (summary of current retail policy, pp. 109-110)

¹⁸ Supra note __ at 110.

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large-scale stores with a super-regional catchment area and the sale of home fabrics and home furnishings.

In 1990, the Dutch adopted their “ABC” policy. The policy distinguishes between “A” locations, which lie at public transport junctions, “B” locations which can be reached by public and private transport, and “C” locations which can only be reached by car. Businesses which attract a large number of customers can only be located at A and B locations.

In 1993, the Dutch adopted guidelines for the location of concentrated large-scale retail industry locations (GDV) which include requirements that, 1. Retail developments must connect to retail plans for the region and 2. That they should be near public transport.

Recently, out of town shopping centers were authorized by the national spatial plan (VINEX). However, such development is subject to the constraints that: 1) the region must first produce a policy documents for shopping centers, 2) the proposal must be developed in consultation with the national government, 3) the shopping center must be served by public transport.

C. France¹⁹

In 1973, France adopted the Loi Royer (Royer Law) which created local and national town planning commissions to approve or deny permits for the construction of large scale retail projects, based on commercial impact criteria.²⁰ The law was adopted for the purpose of preserving small shops, rather than to achieve urban planning objectives. It called for consideration of the impact of proposed projects in existing retailers but not on a town center. The law applied to all retail enterprises in excess of 1,500 sq. meters (and enterprises in excess of 1,000 sq. meters in communities with less than 40,000 inhabitants.) One result was the massive construction of projects just under the sizes covered by the law.

Notwithstanding this law “France has led Europe’s retail revolution of massive new stores.

¹⁹ For detailed discussion of the evolution of the French law see “1998 and the Law Royer Turns Twenty-Five: Combatting the Commercial Suburbanization of France, Since 1973”, Suffolk Transnational Law Review, Vol. 25, No.2, pp.390-471 (1998), Alexander Graboy-Grobescio, Droit de l’Urbanisme Commercial (1999, Paris) and “Review of Experience in France”, Retail Planning Guidelines, Sec. 67 (Report submitted to the Irish Minister for the Environment and Local Government by Roger Tym and Partners, London) (www.environ.ie/press/pa73t87.html)

²⁰ Law No. 73-1193 (Dec.27, 1973) (www.legifrance.gouv.fr/textes/html/fic197312271193.htm) (as amended)

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As of 1996 large retailers controlled more than 90 percent of retail trade in France. ...”²¹ It is generally accepted that the vague criteria of the law and weak controls of conflicts of interest led to a situation in which corruption played a major role in the permit approval process.

In 1996, the Loi Royer was modified by the Loi Raffarin.²² The new law covers developments and expansions of existing developments in excess of 300 sq. meters and incorporate urban planning principles into the review process.

The guiding principles for the review of retail permit applications are:

- freedom of establishment in a business environment of vigorous and fair competition based on satisfying consumer demand for merchandise price and quality,
- improving the national economy’s competitive position in the world economy, while enlivening the quality of rural and town life in France
- to ensure that commercial expansion does not result in disorderly growth of new forms of distribution that crushes small business and exhausts supporting resources.

²¹ Supra note __ at 417. (Suffolk article)

²² Law No. 96-603 (July 5, 1996)

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The law directs the Commission to take into account the equilibrium between small and large forms of commerce, potential effects on commercial activity.²³ Specifically it requires consideration of supply and demand in area, the impact of the proposed development on existing retail provision, and employment and competition implications. Projects in excess of 6,000 square meters require public reports take into consideration its economic, social, and planning impacts .

Review of applications is undertaken by local commissions of commercial urbanism (Commissions departementales d'equipements commercial(CDEC)) established for this purpose. The membership of the commission consists of 1) the mayor of the commune, 2) the member of the intercommunal cooperation agency from the commune of the proposed project who is an expert on spatial planning, 3) the mayors of the two most populous communes of the district other than the commune of the proposed project, 4) the president of the territorial chamber of commerce, 5) the labor representative of the territory, 6) a representative of the consumers association of the department.²⁴

Decisions may be appealed to a national committee which has seven members appointed for three year year non-renewable terms. These national committee consists of: three persons designated for their expertise in distribution, consumption, territorial management, or consumption, the inspectorate of Finance, a member of the inspector General's office, a member designated by the council of state, a member of the Auditor's office.²⁵

In addition to modifying the standards for approving retail projects, the French curtailed the local business tax revenue incentives for project approvals. In 1990, the government set up a compensation fund - FISAC - to receive the business tax paid by large retail units and to redistribute the revenues to retailers in traditional locations. In its review of the French retail regulations for the Irish government, the consultant commented on the impacts of the law prior

²³ Law No. 96-603,articles 1 and 4.

²⁴ Loi Sapin, Loi 93-122, Art. 32 (1993)

²⁵ Loi Sapin, Loi 93-122, Art. 35 (1993)

to 1990:

One of the reasons why there were so many permits granted was because it was in the best interest of the mayors of the communes in which the proposed site fell. This is because of the local taxation laws that followed the government reform in 1983. Mayors of communes wanted large supermarkets in their areas so that they could collect rates for the retailer and also provide ... jobs for the unskilled.²⁶

D. Germany

German retail policy is in the context of overall national principles for the preservation of central cities and the environment.²⁷ The key regulation of large scale retail development is set forth in a part of the national law which was first adopted in 1968, which limits development to core areas (kernegebiete) or special areas (sondergebiete) and requires that such developments be in conformance with comprehensive regional planning.

However, at the outset, many developments fell outside of this restriction because they were outside the legal description of “Shopping Center” or “Supermarket” or it could not be shown that they were predominantly for “supra-local” supply. In 1977 the federal government amended the law to prohibit the construction of retail centers with specified types of adverse environmental and commercial impacts and introduced a refutable presumption that developments with more than 1,500 sq. m. had such negative impacts. In 1987, the law was amended to lower the threshold to 1,200 sq.m.²⁸ Special Areas for retail can only be designated

²⁶ “Review of Experience in France”, Retail Planning Guidelines, Sec. 67 (Report submitted to the Irish Minister for the Environment and Local Government by Roger Tym and Partners, London) (www.environ.ie/press/pa73t87.html)

²⁷ Overall German planning guidelines are set forth in the Federal Regional Planning Act and the Federal Building Code (English version provided by the Federal Ministry for Transport, Construction, and Housing at www.iuscomp.org/gla/statutes/ROG.htm (Federal Regional Planning Act) and www.iuscomp.org/gla/statutes/BauGB.htm (Federal Building Code).

²⁸ BauNVO 1990, Sec. 11.

with the consent of neighboring municipalities.

In 1998, the law was further amended to require a Regional Planning Procedure if a project outside a city does not comply with the aims of comprehensive regional planning or with the designations in a Legally Binding Land Use Plan. Also, the new laws require Environmental Impact Assessments for projects over 5,000 sq.m. outside of cities.

In addition to the national regulations, the regional governments (lander) have adopted criteria for the location of shopping centers and local governments have introduced other types of regulations, including limitations on the range of products in some retail centers to products that cannot easily be supplied by inner city retail shops.

On the other hand, the local business tax has been a major incentive for the approval of shopping centers outside city centers. One commentary notes:

A significant factor in the over-supply of and permission for 'greenfield' shopping centres is the competition between *Gemeinden* to attract new retail/commercial enterprises. The motivating force behind this is the *Gewerbsteuer* (local business tax) collected by the *Gemeinden* from businesses within their area. Thus a major regional shopping centre is a very attractive proposal for small *Gemeinde* on the outskirts of a large town. The inter-municipal competition can also be used by shopping centre developers to gain favourable terms and quick decisions.²⁹

In the former East German areas the construction of large retail developments in green areas was particularly widespread. This may be attributed to the inadequate conditions in city centers, unsettled land ownership issues, the strong desires of small towns for such developments.

The Nordic Nations³⁰

E. Denmark

²⁹ EU Compendium of spatial planning systems and policies Germany, p.130 (1999)

³⁰ The discussion of the policies in the Nordic nations in this report is based on the description of the policies in the Nordic countries in Planning for retail trade in the Nordic countries (a joint publication of the Ministries of the Environment of Denmark, Finland, Iceland, Norway, and Sweden) (www.mem.dk)

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After concerns over retail sprawl emerged in Denmark, the Danish Committee on Retail Trade Planning had concluded that restrictions on maximum shop size increase the potential of the placement of new shops in existing town centres and more dispersed networks of supermarkets.

The 1997 revision of the planning Act, included the introduction of extensive regulations of large retail developments. Such developments are governed by a hierarchy of national law, national plans, regional plans, and municipal plans. Regional plans govern the location of larger shops and shopping areas.

The 1997 Act³¹ requires that planning shall:

- promote a diverse supply of retail shops in small and medium-sized towns and in individual districts of large cities;
- ensure, that areas are designated for retail trade purposes in locations to which people have good access via all forms of transport, including especially walking, bicycling and public transport;
- promote a societally sustainable of retail trade that limits the distance people need to transport themselves in order to shop,
- locate areas for shopping purposes in the central part of a city; in bigger cities and in the greater Copenhagen Region areas for shopping purposes can be located in the central areas of bigger neighbourhoods.³²

The law authorizes retail development outside of town centers under the following circumstances:

- If there is a requirement for small scale shopping facilities in a suburb or village, because the residents do not have easy access to the town center,
- If the proposed retail development is of a special nature which is not suitable for a town center location, e.g. timber, big building materials.
- If there is no space to locate in the town center for conservation and historical reasons

³¹ The Planning Act: Consolidated Act, No. 551 of 28 June 1999 (www.mem.dk/lpa/vvm/eia.htm).

³² Id., Sec. 5c & 5d.

Regional plans must include:

- 1) boundaries on the location of retail developments in each town, city, or district.³³
- 2) limits on the total gross floor space allowed for retail trade,
- 3) maximum sizes for shops selling daily consumer goods and specialty goods.

The Minister of Environment may veto a regional plan proposal in order to protect state interests.

When **municipal** plans are prepared, in designating areas where the construction of retail shops will be permitted, the plan must include:

information on how the municipal plan promotes the objectives for the general structure of the municipality, including how the proposal promotes a diverse supply of shops in small and medium sized towns and the urban environment in the areas to be designated for retail trade purposes;

and

³³ Id., Sec.6, Subsection 9, Part 5

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an outline of the accessibility for people transported through various means to the areas designated for retail trade purposes.³⁴

Also, until regional plans are implemented, the development of new shops (except food shops) with more than 3,000 sq.meters of gross floor space for daily consumption and 1,000 sq. meters for speciality goods is not permitted.

F. Norway

Norway has adopted a virtual moratorium on the construction of shopping centres in excess of 3,000 sq. meters outside the centres of the 31 largest cities, which remains in effect in each county until it has adopted a plan which has been approved by the Ministry of Environment.

Exceptions to the ban must be authorized by county governments. They may be authorized in cases where the “size of the development is adapted to the size, function, and retail catchment area of the location” and for shops that require extraordinary space including the sale of cars, bulky construction materials, and garden centres. Applications for permits which are not within the rules set forth in the moratorium must include analysis of the local and regional retail impacts of the proposed project, examine the accessibility of public transport, and address other environmental concerns.

The Ministry of the Environment has concluded that the new policy has served its aims.

³⁴ Planning Act, Sec. 11, Subsection 8, Parts 4 and 5 (Municipal Plans)

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“Competition in retail trade has not been weakened, existing shopping centres both in urban centres`and elsewhere have increased their turnover and new projects in urban centres are increasing”.³⁵

The County plans must comply with the aims of the moratorium, define locations where retail development may be permitted, and set forth principles for the location of retail trade outlets with goods that require extraordinary space..

G. Ireland

As in Great Britain, retail planning guidelines in Ireland have evolved from general to specific. However, unlike the British guidelines they have culminated with interim specific area ceilings on proposed developments. A 1982 Ministerial Directive set forth general criteria favor of countering urban decline. A subsequent directive in 1998, placed a freeze on the approvals of supermarkets with more than 3,000 square meters.

In January 2001, Ireland adopted extensive guidelines for the location of retail developments and required that counties prepare retail policies, which support center city retail development.³⁶

³⁷ Key objectives of the guidelines are:

³⁵ Supra note ___ at 21.

³⁶ Circular PD 1/2001 contains a summary of the guidelines. For Guidelines and Circular - ([www.viron.ie/planning/planning.html](http://www.environ.ie/planning/planning.html)) (guidelines 41 pp.)

³⁷ For discussion of the rationale for the 2001 guidelines see The Impact of the Draft Retailing Planning Guidelines on the Retail Sector (Dec. 2000). (www.viron.ie/planning/planning.html) (listed on web page as “Consultants Report”) (99 pp.)

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1. The promotion of development which is easily accessible - particularly by public transport - in a location which encourages multi-purpose shopping, business and leisure trips in the same journey.
2. Support of the continuing role of town centers.
3. A presumption against large retail centers near existing or planned national roads

The guidelines contain ceilings on the size of retail developments which remain in effect until local planning authorities incorporate retail policies and proposals which are in conformance with the national guidelines promulgated in 2000. The ceilings retain the cap of 3,000 square meters for foodstores (in the Greater Dublin area the cap is 3,500 square meters). In the case of large, single level stores (retail warehouses) specializing in the sale of bulky household the cap is 6,000 square meters and in the case of retail parks the cap is 15,000 square meters. The report submitted to the Government in support of the new guidelines, concludes that these size caps will have no direct effect on retailing costs. In the case of foodstores the report notes that economies of scale are exhausted at a store size of approximately 2,000 square meters.³⁸

The guidelines state that it will be appropriate and necessary for local authorities to adopt a pro-active approach in enhancing the viability of city centers and provide for presumptions against “out-of-centre” development.

County Councils are required to develop retail development plans which include:

- definitions of the boundaries of core shopping areas of town centers
- a broad assessment of the requirement of additional floorspace,
- strategic guidance on the location and scale of retail development
- the preparation of policies and action initiatives to encourage the improvement of town centers
- identification of the criteria for the assessment of retail developments

Applicants of projects “which local authorities consider to be large scale in relation to existing town centres” are required to submit particularly detailed analyses of the impacts of their proposals and have the burden of demonstrating that the proposed development will not have “a material impact on the vitality and viability of any existing town centre.” In their analyses applicants have to demonstrate whether or not the proposal would:

- Support the long term strategy for town centres as established in the development plan and not materially diminish the prospect of attracting private

³⁸ Id., at 5.

sector into one or more of the town centres.

- Cause an adverse impact on one or more town centres, either singly or cumulatively, with recent developments or other outstanding planning permissions, sufficient to undermine the quality of the centre or its role in the economic and social life of the community.
- Diminish the range of activities and services that a town centre can support.
- Cause an increase in the number of vacant properties in the primary retail area that is likely to persist in the long term.
- Ensure a high standard of access both by public transport, foot and private car so that the proposal is easily accessible to all sections of society.
- Link effectively with an existing town centre so that there is likely to be commercial synergy.³⁹

Belgium, Finland, Greece, Spain, and Sweden

Detail about scope of the Belgian, Greek, and Spanish national regulations of the placement of retail facilities are beyond the scope of this report. However, some highlights are noted.

In Belgium, since 1975, commercial developments of more than a designated size have been subject to review by a national “Distribution Commission”,⁴⁰ which may reject a proposal or place conditions. The original version of the law was applicable to projects of more than 3,000 square meters in urban areas and 1,500 square meters outside urban areas. Proposals which are approved by the Distribution Commission are then subject to approval by local governments.⁴¹

In Finland and Sweden, proposals for retail facilities are subject to environmental review standards which are applicable to all types of projects. In addition, the Swedish Board of Housing, Building, and Planning has proposed that the following factors must be considered in assessing retail development proposals: effects on the current structure of retail trade, effects on

³⁹ Retail Planning Guideline 65.

⁴⁰ Loi du 29 juin 1975 relative aux implantations commerciales (Moniteur belge du 1.7.1975) (Belgian legislation is accessible at www.just.fgov.be according to publication date in the Moniteur belge).

For background up to 1994 see Merenne-Schoumaker, “Retail Planning in Belgium”, *supra* note __ at pp. 31-49.

⁴¹ The annual report (Report annuel 2000) of the Commission Nationale de la Distribution consists of statistical reports on the activities of the commission. (mineco.fgov.be/organization_market/stores/home_fr.htm)

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citizens' shopping for daily consumer goods and on their financial situation, effects on competition, social effects, effects on equity, effects on employment, effects on energy use and the environment, effects on transport services and the flow of road traffic, and effects on nature, culture and aesthetics in the built environment.

III. Regulation of the Development and Location of Hypermarkets and Shopping Malls in Central and Eastern Europe

Since the fall of the Communist regimes in Central and East Europe (CEE) around 1990, large shopping malls and hypermarkets have spread rapidly and have taken over a substantial share of the retail market. They are a major target of Western investment in the region.

In some senses, public and institutional support for their spread has been even greater in this region than in West Europe because:

1. Local governments in the CEE are particularly desperate to bring in hypermarkets, malls, and any other types of businesses which generate tax revenues and/or employment. They hope to maximize sales and gross income tax revenues as very high national income taxes have made other significant forms of local taxation infeasible and national governments have placed increasing fiscal responsibilities on local governments.

2. Consumers are particularly desirous of obtaining the conveniences of one stop shopping in the comfort and convenience of their cars outside work hours after not having had these opportunities under the prior economic system.

3. In the CEE, planning powers are very decentralized, largely as a reaction to the high degree of centralization of the Communist era. Such decentralization may promote consideration of local interests and concerns. At the same time, it permits localities to take actions with regional impacts, without input from neighboring jurisdictions or regional authorities.

4. Potential public opposition is often limited by permit review procedures which limit public participation to adjacent property owners and specified registered organizations which have an interest in environmental issues.

5. Public access to project proposals and related documents which are in the possession of public authorities is often severely limited.

A. Developments in Hungary

In Hungary, hypermarkets have obtained a significant position in the urban landscape. In the 1980's, hypermarkets were constructed in central city locations in Budapest. Since the transition, much larger hypermarkets and malls have been constructed, primarily outside of the city center. Some of these locations are difficult to access without cars. On the other hand, two large high end shopping malls were constructed adjacent to center city metro stations and two others are adjacent to metro stations within fifteen minutes of the city center by metro.

Between 1990 and 1997 development pressure in the retail sector resulted in the widespread proliferation of amendments of local plans. Legislative procedures for zoning amendments were relatively simple and central state control of local decisions was weak, as a result of the process of decentralization of government powers. Consequently, if the interests of the local landlords (both public and private), the cities and the developers coincided, planning and building permits were promptly issued. Planning permits, embodied in the revised official plans, in most cases have been the outcome of bargaining with the developers for planning gains in the form of specific improvements in land and infrastructure.

Majority of the completed shopping centers and those that are under construction got their building permits before 1997 and in the subsequent years (old local urban plans were enabled to remain in force until 2003). The 1997 Act on the Protection and Formation of the Built Environment (the new urban planning and building law) has effected the processes in two ways.

First, this Act introduced a complex checking up procedure before the adoption of any local urban plan and regulation. Cities are obliged to send their plans and zoning regulations to 27 specific state agencies (including among others those of environment protection, water management, traffic management) that can block the adoption of plans if their content "hurts law", that is, the plans do not conform to any binding state regulations controlled by the given agency. These agencies (inspectorates) are also authorized to express their counter-opinions concerning the content of the plan but these are not binding for the local governments. The regional chief architects, actually chief planners acting on behalf of the Minister (State Secretary), have the final say in the procedure by supervising all the statements and opinions of the agencies before the adoption of the plans. This procedure much helped in the promotion of a more lawful way of local planning but less was achieved concerning the material/environmental content of plans. One of the main results of the introduction of the new state legislation has been that the length of time needed to achieve planning permit substantially increased. Although the former rule that a local zoning plan can be adopted for an area not smaller than an urban block (an area bordered by streets) remained in force hasty and ill-considered plan amendments has been hindered.

Second, the new national planning code, including a simple zoning system compulsorily applicable in local plans, introduced a special zoning category for large shopping centers. As local governments are enabled to formulate most elements of their zoning regulations (the national code includes only some simple rules that limit local decision making, for instance by fixing the maximum floor space indexes per zones) this authorization may help local governments to apply a more supply-oriented planning behavior concerning the location, size and environmental impacts of shopping centers. Because most cities are

recently working on their "new" plans and regulations less is known about the fact how cities utilize this authorization.

Besides these new elements of planning control another regulation that influences the location and building of large shopping centers is a requirement of payment of a redemption fee if a piece of land is extracted from agrarian use. If a piece of land is registered as agrarian by the Land Registry Office a permit issued by the Land Office has to be attached to any applications for building permit. The permit of the Land Office must be in conformity with the official local urban plan. This payment is due to the developer the magnitude of which depends on the original classification and the soil quality of the piece of land. The main effect of this regulation is the increase of land costs, especially if the land is of high agrarian quality.

Apart from these technical, procedural and cost elements of planning control no national policies exist concerning large shopping centers. The lack of such policies basically reduces the effectiveness of the Environmental Impact Report (EIR) procedure introduced in 1995 by the Act on Environment. According to a central government decree accompanying this Act shopping centers larger than 20 000 square meters fall under the procedure of EIR according to the general regulations of this study in the 1995 Act on the Protection of the Environment

Budapest has adopted additional regulations in regard to shopping centers. Under the Budapest law, proposals for buildings with a gross commercial floor space of larger than 6,000 square meters must be justified by:

- a. an urban planning impact report,
- b. a business impact report,
- c. a complex environmental impact assessment report,
- d. a traffic impact report,
- e. a scenery and silhouette analysis

However, such studies are not undertaken until after planning permits have been granted. Instead, they are only a precondition for the building permits which are granted at an administrative level. According to interviewees no projects were stopped as a result of an impact study.

Under maximum building size restrictions, up to 5,000 additional square meters over a base allowance of either 20,000 sq.m. or 30,000 sq. m. are permitted if a building is within 300 or 500 meters of a metro station.

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C. Poland

Under an amendment to the national Land Management Act, which was adopted in 2000, all proposals for retail centers with more than 2,000 square meters in cities with over 20,000 inhabitants or 1,000 square meters in cities with less than 20,000 inhabitants must be analyzed to evaluate their impact on the labor market and the environment.⁴² In addition, all permits for such developments must be approved by the city council.

In 2002, one political party, Prawo i Sprawiedliwosc (Law and Justice) announced its intention to introduce legislation which would prohibit local authorities from issuing permits to retail developments which would occupy more than 30% of the total retail space within its jurisdiction. The proposed law would also prohibit shopping on Sundays and during holidays except for small family shops and shops in train and gas stations, airports, hotels. A similar law was passed by the Parliament last year but was vetoed by the President.

⁴² INSERT CITE

IV. Conflict of Interest Laws

Just as it is impossible not to taste honey or poison that one may find at the tip of one's tongue, so it is impossible for one dealing with government funds not to taste, at least a little bit, of the King's wealth. (Kautilya, Prime Minister of a state in Northern India)

As long as local councils can be controlled by favors from developers, there is little hope that public controls over retail development policies can be guided by public purposes.

A. The CEE

Throughout the CEE, interviewees stated that conflicts of interest are standard in the public land use decisions. None of the interviewees mentioned any instances in which public officials of any type had been penalized for conflict of interest violations or of cases in which land use permits had been voided because they had been obtained through conflicts of interest.

In the CEE, conflict of interest laws are spread among laws governing national and local governments. **While broad principles about the impropriety of conflict of interests are present in national laws, conflict of interest legislation is characterized by a lack of any penalties and/or enforcement mechanisms for violations.**

The ineffectiveness of the national laws may be evidenced by the fact within CEE countries interviewees gave widely differing answers were given about whether there even were conflict of interest laws and/or their scope. Commonly, interviewees who were knowledgeable about public law and policy stated that there were no conflict of interest laws. It seems that the laws which do exist act as theoretical statements of public objectives without much real significance.

Furthermore, some interviewees stated that persons who claimed that particular public officials had conflicts of interests faced the threat of lawsuits for defamation. After making such a claim, a deputy mayor of a major Polish City was subject to a defamation claim, which took five years to resolve. In the end, the former Deputy Mayor prevailed in national supreme court., at a cost that most persons could not bear.

Conflict of interest laws can provide some relief by prohibiting direct and open ties between the decision making authorities and parties that are awarded contracts. Obviously, they cannot prevent secret ties. However, interviewees repeatedly indicated that such legislation would be very useful, even though it may be circumvented.

B. West Europe and the U.S.

In the U.S. strong conflict of interest regulations have been in effect for decades. In West Europe increasing strict measures have been adopted in the past few years and the EU has promulgated model standards.⁴³

While the following discussion provides contrasting details about the conflict of interest laws in the CEE, the EU, and the U.S., the real differences are in the political climate which determines whether or not the laws are enforced.

1. The EU Model Code of Conduct

The Council of Europe has created a Committee of Member States on Codes of Conduct for Public Officials. This committee has recommended the adoption of model codes by member states. Its "Model code of conduct for public officials", promulgated by the Committee of Ministers to Member States on Codes of Conduct for Public Officials, , includes the following conflict of interest standards:⁴⁴

Article 13 - Conflict of Interest

1. Conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, the impartial and objective performance of his or her official duties.
2. The public official's private interest includes any advantage to himself or herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business or political relations. It includes also any liability, whether financial or civil, relating thereto.
3. Since the public official is usually the only person who knows whether he or she is in that situation, the public official has a personal responsibility to:

⁴³ For a discussion of German conflict of interest law see "Davies, "The Public Administrative Law Context of Ethics Requirements for West German and American Public Officials: A Comparative Analysis", Georgia Journal of International and Comparative Law, Vol. 18, pp. 319-390 (1988)

⁴⁴ Recommendation No. R (2000) 10.

- be alert to any actual or potential conflict of interest;
- take steps to avoid such conflict;

- disclose to his or her supervisor any such conflict as soon as he or she becomes aware of it;

- comply with any final decision to withdraw from the situation or to divest himself or herself of the advantage causing the conflict.

4. Whenever required to do so, the public official should declare whether or not he or she has a conflict of interest.

5. Any conflict of interest declared by a candidate to the public service or to a new post in the public service should be resolved before appointment.

The public official who occupies a position in which his or her personal or private interests are likely to be affected by his or her official duties should, as lawfully required, declare upon appointment, at regular intervals thereafter and whenever any changes occur in the nature of those interests.

Article 15 - Incompatible outside interests

1. The public official should not engage in any activity or transaction or acquire any position or function, whether paid or unpaid, that is incompatible with or detracts from the proper performance of his or her duties as a public official. Where it is not clear whether any activity is compatible, he or she should seek advice from his or her superior.

2. Subject to the provisions of the law, the public official should be required to notify and seek the approval of his or her public service employer to carry out certain activities, whether paid or unpaid, or to accept certain positions or functions outside his or her public service employment.

2. Great Britain

In Great Britain, a “Committee on Standards in Public Life” was set up in 1994, in response to widespread discontent about the standards of public officials. Stimuli for its creation included a scandal over payments to members of parliament in return for raising questions in parliament and the employment of former ministers by firms which the ministers had been dealing with while in office.

In 2000, Britain adopted an extensive conflict of interest act.⁴⁵ The Act provides for a national

standards of conduct board with investigative and adjudicatory powers, including the power to suspend public officials from their positions. Under the Act, each locality must adopt a code of conduct, which is consistent with the national code, and it must create a local standards committee. The national code requires disclosure of “direct” and “indirect” pecuniary interests and prohibits participation prohibition against speaking or voting on matters where the public official has a private or personal interest. “Private and personal interests include those of your family and friends, as well as those arising through membership of, or association with, club societies and other organisations.”⁴⁶

3. France

In 1993, France adopted the Loi Sapin which sets forth standards for the conduct of public officials.⁴⁷ The law includes specific standards for members of a “Commission départementale d’équipement commercial” which is responsible for ruling on applications for retail developments. The law states that a member of the commission who has a personal interest in the outcome or has represented an interest party, may participate in deliberations on the application.⁴⁸

A Central Service for the Prevention of Corruption is responsible for ensuring compliance with the law. The law also includes substantial sanctions with penalties of \$100,000 to \$200,000 for violations.

4. Denmark

The Danish conflict of interest law is broad in scope. It requires exclusion from participation in all public matters where there is a *potential* financial or personal interest. It also requires when: “*circumstances ... are likely to lead to any doubt about such persons impartiality.*”

- Any person who has notice of the types of circumstances covered by the conflict of interest provisions is required to notify a superior as soon as possible.

-The Act does contain exceptions in the case that “no risk may be assumed to exist that the decision to be made may be affected by extraneous considerations.” or “it would be impossible or attended with substantial difficulties or misgivings to arrange for another person to act in his stead in considering the matter.”

C. United States

In the U.S., conflicts of interest in local governments are covered by state laws. Typically, these laws contain broad definitions of conflict of interest, require the submissions of financial disclosures, specify a time period during which former public employees cannot represent private

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companies before the former employing agency, provide for substantial penalties, and establish independent commissions which are responsible for the enforcement of the laws. In the U.S., unlike Europe, financial disclosures which public officials are required to submit are accessible to the general public. U.S. law review articles contain detailed discussions of the practical strengths and weakness of the laws and their specific provisions.⁴⁹

The U.S. laws expressly prohibit public officials from using their office or employment to obtain any financial gain for themselves, members of their family, or businesses with which their associated. Public officials are prohibiting from accepting or soliciting anything of value if their vote would be influenced.

Other types of provisions include;

- prohibitions of substantial severance payments by private companies to employees prior to their assuming public positions,
- provisions which enable private parties, as well as the enforcement agency, to bring civil court actions
- protections of “whistleblowers” (employees who report illegal actions by their supervisors),

The State Ethics Commissions typically have responsibility for 1) conducting investigations and making determinations of these investigations, 2) insuring the filing and public availability of statements of financial interest, 3) issuing advices and opinions to persons about their obligations under the law.

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