

## **IMPLEMENTATION OF PUBLIC PROCUREMENT AND INTER-MUNICIPAL COOPERATION**

Public Hearing on Review of the workings and effectiveness of the Public Procurement Directives – 20 April 2006

During the recent accession of new member states, many contacts were organised between the new and old member states in order to exchange information and experience on implementation of the current European legislation. Our organisation, the Association of Flemish Cities and Municipalities, was involved in many of those events. We noticed on all occasions that local authorities in new member states showed great interest in concepts of intermunicipal cooperation. Municipalities in all new member states consider intermunicipal cooperation to be a very interesting instrument to enhance local possibilities to tackle the different challenges, yet maintaining flexibility and possibilities for good and transparent public-private partnerships.

Municipalities constitute the first line of government response to the needs of all citizens and therefore carry most appointed public tasks. Yet, it is not always easy for a single municipality to meet all needs. In some cases, local services can be organised more efficiently through cooperation. Must every municipality own its own swimming-pool, sports centre, big library, cultural infrastructure? Should every municipality have its specialists on water management, mobility, spatial planning, labour legislation, mediation,...? Should each municipality buy high technological equipment like road maintenance machines? Water management, traffic problems, environmental issues do not suddenly stop at the municipality border. On the contrary, measures taken in one municipality can have an impact on neighbouring local authorities. Dialogue and cooperation between local authorities can lead to better local policy, more efficient local public services and the mutual use of the existing expertise. At the same time, the fact that these services remain a local competence ensure a local need oriented tailor made organisation. Intermunicipal cooperation at the same time forces the elected to approach social issues independently from political positions. Different local majorities have to work out a collective solution that has to be presented to different city councils. Which intensifies transparency and democracy.

It comes as no surprise that the concept of intermunicipal cooperation is more than well established throughout Europe since a long time. The Council of European Municipalities and Regions conducted a survey amongst its members. The results show that intercommunal cooperation exists in various forms and shapes in every European country. In every country that responded to the survey, the creation of intercommunal cooperation is not subject to tendering procedures. Intermunicipal cooperation is used to provide public services like distribution of energy, water management, waste management, social housing, sports infrastructure, crematoria, public transport, etc... This choice for intermunicipal cooperation has always been and should remain a prerogative of the local authorities. Municipalities are best placed to determine which local services require specific conditions regarding equal access and treatment, continuity, quality, transparency and affordability.

As intermunicipal cooperation can be a benefit for a stronger democratic approach to solve local issues, it is unacceptable that cooperation between two or more democratically elected bodies would be submitted to mere principles of internal market. Also if the cooperation is set up to provide a more efficient local public service of general economic interest. Mere application of public procurement rules would only limit possibilities for local authorities and never lead to a boost for the internal market.

It is a fact that submitting pure cooperation between public authorities to tendering procedures would have little or no impact on global turnover in Europe. Intermunicipal cooperations, just like municipalities themselves, also have to apply the procurement legislation for all services and goods that they want to purchase. Preliminary tendering procedure to allow the intermunicipal cooperation in the first place would

only add an extra useless procedure entailing excessive costs. Two municipalities can organise a tender on their own, but would not be able to take the simple decision to do this together in a structural way. This approach would have a negative impact on public efficiency and cannot be defended to the taxpayer.

Intermunicipal cooperations have often taken many initiatives, e.g. in household waste management. In our experience, the presence of intermunicipal cooperations has been an enrichment for the internal market. Intermunicipal cooperations, as they are represented by political stakeholders, take great care for the effectivity and quality of the service they organise. For private companies, efficiency is the priority as they have to report to their shareholders. It is important that European Commission should acknowledge that intercommunal cooperation can have a positive influence on competition. The presence of companies set up by a group of municipalities can force private companies to take their functioning in consideration when replying to a call for tenders. Similarly, the presence of private companies forces publicly-owned companies to be more economically efficient. The presence of both organisations forces all players to think about costs and quality of the service in a way which would not be reached by simple competition between two basically totally different organisations. This hybrid approach only has great benefits for the inhabitants of Europe. There is no good reason why, when a group of municipalities tries to become more efficient by creating a jointly-owned company, Europe should impose stricter rules on them than on the private sector. It is imperative that local authorities can be an operator in the provision of public services if we want to retain the know-how for assessing the quality of private service providers. Without this know-how, the local sector will no longer be able to guarantee the specific goals of public services mentioned above.

Subsidiarity is an important factor in this discussion. Local governments have the best knowledge of the local market and should therefore be allowed to decide whether they

- want to organise a public service themselves;
- assign a task directly to a body they own and control along with other municipalities if the task is a local public service delivered across their common area and with a main aim not to make profit;
- tender to possible service-providing companies.

It is not logic that two inhabitants, who want to share their garden and grow vegetables for their own use, would have to ask the grocers first if they are allowed to do that... This is precisely what recent Court decisions suggest when it comes to the organisation of local public services by municipalities. The European legislation never intended to introduce an obligation to outsource and would never impose this on private companies. European municipalities ask for a strong signal that this is also the case for them. For a better local public service. For more quality on the internal market. And for the safeguarding of the European social model.

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