Inter-authority cooperation under the public procurement directives – the need for legal certainty

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The need for legal certainty

“...clarification is also needed in order to identify to what extent Community law applies to the delegation of tasks to public bodies, and which forms of co-operation remain outside the scope of internal market provisions. Just recently, the European Court of Justice made it clear that relations between public authorities, their public bodies and, in a general manner, non-commercial bodies governed by public law could not a priori be excluded from public procurement law. Clearly further clarification on this issue could form part of an Interpretative Communication on IPPPs.”

COM (2005) 569 on Public-Private Partnerships and Community Law on Public Procurement and Concessions
The UK situation

• The UK Government’s Efficiency Programme requires the public sector to achieve **€30 billion in efficiency gains** by 2008.

• Local government’s share is **€9 billion**.

• The Efficiency Programme will go on beyond 2008 with even **more ambitious targets**.

• Efficiency gains on this scale can only be achieved through a **re-configuration of the public sector**.

• Front offices (customer services centres) and back offices (support services) must be **shared** between public bodies.
The UK situation

• The creation of shared services in the public requires inter-authority cooperation.

• It requires horizontal co-operation between neighbouring local authorities and vertical cooperation between local authorities and central government.

• Case C-84/03, Commission vs. Spain, created uncertainty about the use of contractual agreements for inter-authority cooperation.

• Legal and administrative systems in Europe differ. The instrument used for inter-authority cooperation (private or public law) is irrelevant.
The solution for inter-authority cooperation

- An interpretative communication on PPPs is insufficient.

- Legal certainty demands amendment of EC Public Procurement Directives (17/2004 & 18/2004) to exclude inter-authority cooperation irrespective of the instrument that is used for cooperation.
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