

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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