

Minutes - Workshop on Public Services and Privatisation on Saturday morning.

Chair: Heide Rühle

Participants in the panel: Gerhard Fitz (Chairman of Greens in Innsbruck, Austria) ; Jean Lambert (MEP, UK) ; Wolfgang Teubner (European Secretariat of ICLEI)

Introduction by Heide Rühle

Heide Rühle introduced the debate by emphasising that pure capitalism was an outdated system. The original European model was based on a mixed economy, with both market mechanisms and State intervention. This original model has been more or less put between brackets in the more recent period but we must re-invent it. In this framework we should assess whether the development of the internal market, which is an important characteristic of the EU building process, is compatible with the model of a mixed economy, and we should evaluate the negative or positive aspects of the EU in this regard.

Presentation by Gerhard Fritz

Gerhard Fritz underlined the following points.

- There is a direct link between the tax system and the possibility to fund public services. In the past years there was a growing paradigm of a "sober State" and tax reductions, but the consequence is that there is less money for public services. If we want strong public services we must admit a solid tax system ("there is no free lunch") and it is more particularly up to the wealthiest citizens to pay their due part of it.
- Municipalities have a particularly important role to play in the development of Services of General Interest. Unfortunately right-wing policies have often made it impossible in the last 30 years.
- An important question is who should implement these tasks of general interest and who should bear the costs. In this regard there are 2 main possibilities for local authorities: they can implement these tasks by themselves, or they can "buy" them from services providers. Privatisation schemes have often lead to market failures, but in principle there is no reason that public authorities implement all these tasks by themselves (in this regard there is certainly a difference of approach between the Greens and the Socialists). The important point is to make a good use of tax-payers' money
- In the cases where local authorities "buy" these tasks to external services providers, it is a fundamental point that they should correctly apply the EU legislation. One essential aspect is the possibility to use social and environmental criteria in public procurement.

- For instance in Innsbruck, the public transport system is functioning in a satisfactory way. It is not always so in all sectors (for instance in the field of healthcare) but generally speaking competition mechanisms can play a useful role and can bring an added-value to the citizens.

- More than two-third of local rules come from the EU legislation, but many local decision-makers do not know it. The role of Green Members of the European Parliament is therefore essential. Local Green political actors should also involve themselves in the initial stages of the EU legislation process, in particular when the European Commission issues a Green Paper. This is possible because the EU information system is really transparent.

Presentation by Jean Lambert

Jean Lambert emphasised the following points.

- There is a tension between the single market and public services. A part of this tension arises from difficulties of definitions (definition of Services of General Interest, of profit vs not-for-profit activities, etc.)

- Local authorities have a tremendous responsibility in the provision of Services of General Interest.

- Under this legislature there was a big fight concerning the famous Services Directive. We managed to exclude significant parts of Services of General Interest from the scope of the Directive, in particular in the social and healthcare fields. But some of the problems are coming back, for instance with the current legislation proposal on cross-border healthcare. Here we must find a balance between citizens' right to cross-border treatment, and the need to protect national social security systems.

- Concerning the competition issue, there are too many simplistic approaches (some believe that the market is always better, others believe that the State is always doing better).

- Concerning the funding of Services of General Interest, there is much to be said about the experience in the UK. Starting from the Conservative Governments in the 1990s, and continued by the Labour Government after 1997, the UK has developed the Public-Private Partnership approach. This approach was motivated by the need to put more private money in SGIs, but it should be noted that it's the public authorities, not the private sector, which bears the risks if anything goes wrong.

- With these Public-Private Partnerships, we should take into account the fact that private money usually comes from credit by banks and that consequently there are interest rates which make the funding between 2 to 4% more expensive.

- There are many problems with Public-Private partnerships. For example there can be distortions in decision-making because the processes are not fully publicly-

controlled. But ultimately the public authorities have to pay the price (e.g.: bailing-out the losses of the motorway system around London, or refunding the Royal Bank of Scotland, which means that the Government gives money to the bank so that the bank can provide credit to the economic activities !

Presentation by Wolfgang Teubner

Wolfgang Teubner emphasised the following points.

- ICLEI is a global network to promote sustainability in public procurement. It provides guidance to local authorities in order to develop the inclusion of sustainable criteria in public procurement processes.
- Sustainable procurement is based on the principles that (i) public authorities should think carefully about what they buy, and (ii) social and environmental criteria should be applied in public procurement.
- At the EU level, the 2 Directives of 2004 on public procurement have considerably clarified the situation by explicitly allowing for non-economic criteria in public procurement (especially social and environmental criteria). However there is still unclarity about how these criteria should be used. Nevertheless it should be noted that the European Commission is pretty much in favour of boosting energy efficiency and sustainability in general.
- So far these social and environmental are not used enough by public authorities. Figures show that the situations are very different in the different Member States. In some Member States Green criteria do exist in more than 80% of public procurement, in some others it's less than 5% ! This is particularly worrying because using such sustainability criteria could have a major impact (it is considered that about 18% of the Kyoto objectives could be achieved through sustainable procurement).
- There are many reasons explaining why sustainable procurement is too rare : many people think that using such criteria would make products or services more expensive (which is wrong: although in some cases such products or services could be more expensive to buy, they are globally less expensive because they are cheaper in terms of use and in terms of waste management) ; other problems are due to lack of expertise, information, training and cooperation among local decision-makers, and also because remaining legal uncertainties. Of course one should also not underestimate the lack of political will.
- When public authorities want to use sustainability criteria, it is essential that they must specify it in the subject-matter of the procurement (otherwise criteria could not be admissible). They also have to mention these criteria in the technical specifications, in the award criteria, in the contract performance clauses and in the requirements on suppliers.
- It is also important to ,organise a proper dialogue with suppliers : briefings before and after the award, incentives to encourage tenderers to respect sustainability

criteria, guarantees of contract continuation, feedbacks to non-successful bidders.

Questions and answers

Q: is it possible to exclude bidders who are geographically far away, because choosing them would have detrimental environmental impact ?

A: no, it would be discriminatory to exclude them from biddings, but it is possible to use environmental criteria in such a way that in practical terms the distance is taken into account (for example specifying the need for a rapid maintenance)

Q: at what stage of the process is it better to have a dialogue with suppliers ?

A: it's useful at all stages ; in particular there is a possibility to use restricted procedures, i.e. make a pre-selection before launching a proper call for tenders

Q: how to reduce legal uncertainties regarding public procurement ?

A: the most useful tool is guidance

Q: are there judiciary procedures in case of no respect of the EU legislation on public procurement ?

A: judiciary procedures take place when bidders complain, but they need to do it at an early stage when they feel that they are discriminated against

Q: is there a possibility not to apply EU legislation on public procurement ?

A: caselaw of the European Court of Justice allows for such possibility if the selected operator is controlled by the awarding authority and provides its services only to that awarding authority ; in this case it's seen as a "regie" and the public procurement Directives do not apply

Additional remarks

Wolfgang Teubner emphasised also that:

- privatisation does not necessarily lead to reduction of costs ;
- on the website of ICLEI there are interesting information regarding best practices of public authorities in sustainable procurement

Jean Lambert emphasised also that:

- it is useful to better develop local banking systems and local bonds systems, because they can orientate more efficiently local resources to local SGIs
- in addition to sustainable procurement, it is useful to develop further the environmental impact assessments

Heide Rühle emphasised also that there is currently a big threat against the possibility for local authorities to develop inter-municipal partnerships. The European Commission puts them under pressure by considering that if there is more than 0.1% of private money in such partnerships, they fall under the remit of the internal market procedures. The German Government does not inform correctly local decision-makers in this regard. This is a big problem because although it is good to develop transparent procedures, they should not be detrimental to the organisation of inter-municipal partnerships.

Report: Stany Grudzielski