DEVELOPING CONCESSIONS IN THE EUROPEAN UNION

E3PO is a European Association representing a number of federations of private companies active in the operation of public services: transport, waste management, energy, water, public works, catering. Most of its ultimate affiliates have an in-depth practice of partnerships with public authorities and of concessions; they believe that Europe is facing a situation that will call for the development of public-private partnerships and the increasing use of concessions. E3PO has therefore a significant interest in the European regulatory framework for concessions.

“Concessions” have been used consistently under different names by authorities in many European countries to benefit from the private sector capabilities in the delivery of public services or the management of public infrastructure. These contractual arrangements have delivered significant improvements in quality, reliability in service provision, efficiency and innovation. Importantly also, they have been able to accommodate technical, social and environmental constraints set by public authorities.

The regulatory and legislative background underpinning concessions, whatever its shape, should preserve and amplify the benefits to society of this form of cooperation between the public and private sectors. This requires maintaining the necessary differentiation between concessions and public contracts in order to respect the key features of most concessions that result from the sharing of public service duties, including responsibility and risk, between the authority and the concessionaire.

Concessions (in their Community meaning) cover a wide range of arrangements, and may differ from one Member State to another, with significant differences between the sectors. For these reasons it is clear to E3PO that the further development of concessions requires the respect of this diversity of practice based on subsidiarity.

The priority at community level should be to allow the practice of concessions as they currently work, in order to maintain and develop the benefits that they can bring to all the EU Member States. At this stage, E3PO does not believe that there is merit to any new EU legislative initiative on concessions.

However, E3PO considers that some clarification concerning publicity at EC level is needed. Applying to service concessions publicity rules similar to those currently applicable at EU level for works concessions could give more legal certainty to awarded contracts since they would not be subject to criticism due to lack of adequate EU-wide publicity.

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