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Public service delegation contracts in Hauts-de-France

Executive summary

2022 Annual Public Report

Local authorities and their institutions can appoint third-party operators to construct facilities and manage fully or in part of their public services. This kind of agreements is now widely used in many areas such as water distribution, waste collection and treatment, and the management of urban transport networks.

Stakeholders in public service delegation contracts



Source: Court of Accounts

Without waiting for the end of the Covid crisis, the financial courts wanted to analyze the arrangements made by contracting authorities and their delegates in response to the shutdown of their activities and/or the health restrictions, and measure their impacts on users. The survey was carried out on a sample of municipalities and local public institutions in Hauts-de-France representative of the diversity of rural and urban areas. It in no way calls into question the responsiveness of local authorities regarding the population, which is unanimously emphasised.

Priority given to protecting delegates' financial interests

With the covid crisis, the delegated services checked have experienced a drop in use: between 15% and 20% for transport networks, between 40% and 80% for entertainment and conference venues, and more than 60% for swimming pools and water parks. This resulted in a significant decrease in their revenues.

On their own initiative or at the request of the delegates, some local authorities, anxious to preserve public services, decided to grant support to their outsourcers in the form of financial compensation, exemptions from fees for operating a public concession, cash advances or discounts applied to penalties due. These measures were taken without any real prior analysis of the actual situation of the concerned delegates.

Thus, in this sample the local authorities maintained payment of financial compensations in return for public service obligations, despite the fall slump in the delegated activities, while the cessation or reduction of operations because of Covid restrictions led to a reduction in the cost of these obligations and should therefore have led to a revision of the amount paid.

These payments, combined with central government support mechanisms, have helped to maintain the profitability of operations and protect delegates' interests and, where applicable, those of their parent companies, while users suffered from a reduced service.

The Covid crisis has once again shown that local authorities do not sufficiently understand the economic mechanisms of public sector delegation contracts. They impose few requirements on delegates to report reliable and complete financial data, which restricts the information available to the deliberative assembly and citizens.

Failing of being able to grasp the magnitude of the fall in revenue, the savings made by stopping or limiting services, and the full amount of central government aid, local authorities have not been able to assess their delegates' real situations.

However, good practices have been identified and should make it possible to establish a more balanced relationship between the two contract partners in the future. Some local authorities have consequently negotiated review clauses and have been or will be in a position to demand repayment of sums unduly paid.

The preponderant role of delegates to meet the imperatives of public service continuity

Compliance with the principles of continuity and adaptability of public service is the joint responsibility of the contracting authority and its delegatee. The first defines and directs the service strategy. The second implements it in compliance with the contractual provisions. However, with the health crisis, total or partial closedowns, combined with health distancing measures, severely disrupted the continuity of public service.

The survey showed that the prospect of a deficit in public service delegation had led contracting authorities to intervene with financial support for delegates without always defining a strategy for service continuity and adaptation, essential in such a situation.

The procedures for implementing service continuity clauses are all too rarely explained in the contracts. The absence of common procedures for managing disruptions in activity is harmful if an exceptional event occurs, as the pandemic has demonstrated. Too often, continuity plans have been designed and implemented at delegates' initiative.

The Covid crisis revealed the importance of providing high quality responses to users. However, local authorities have made few demands in this regard. However, the situation offered them the opportunity to re-examine with their partner the contract's suitability with regard to the scope of the activities proposed as well as against the yardstick of achievement of the objectives set and the quality of the service provided.

Recommendations

Consequently, the Court issues the following recommendations to local authorities:

1. in accordance with Article L.2224-2 of the General Code of Local Authorities, define the nature of the public service obligations, the method of calculating the payments that the contracting authorities make to delegates in return for these, and the terms and conditions of payment in respect of the performance of the contract;
2. in public service contracts, strengthen the obligations on delegates in terms of the quality of service provided to users and monitor performance.