



## Joint Statement on Effective, Resilient and Cooperative Public Procurement

The undersigned Organisations are fully committed to fair, transparent and effective procurement procedures.

- We strongly oppose any further restrictions on public-public cooperation and in-house provision, as such proposals contradict EU Treaties, established CJEU case law.
- The principle that public, local and regional authorities and its companies must retain the freedom to organize public services is guaranteed in primary law.
- The EU treaties recognise the added value of public services, for instance in articles 14 and article 106(2) of the TFEU<sup>[1]</sup> as well as Protocol No 26 – this added value of public services should be strengthened.

[1] Treaty on the functioning of the European Union

A city or a region that organises waste management, water supply and sanitation, energy, IT, transport, broadband or other comparable infrastructure services within its own group or jointly with other public entities is not replacing competition with protectionism but is deciding on the organisational form of public services. Where public contracting authorities procure services on the market, open competition is a key instrument for quality, innovation and the efficient use of resources. The democratically legitimised public contracting authority remains responsible for price, quality, security of supply, climate targets, investment planning and resilience to crises. It can only fulfil this responsibility effectively if EU law allows it genuine freedom of choice between market procurement, in-house provision and cooperation. However, it is equally clear that European public procurement law is not a tool for enforcing outsourcing, privatisation or market opening for their own sake. It regulates procurement on the market, not the upstream decision by public authorities to perform public tasks themselves, jointly or through their own controlled entities.

In-house procurement is an indispensable tool for ensuring the provision of municipal services of general interest. It enables efficient service provision and a long-term perspective for investments and the development of local expertise. In-house structures make it possible to react quickly and flexibly to disruptions or new requirements, which is essential for securing municipal services in areas such as energy supply or public transport.

In-house contracts and public-public partnerships are not unjustified privileges. They are an expression of democratically legitimised self-organisation, local self-government, resilience planning and economic responsibility. They have been deliberately codified in Article 12 of Directive 2014/24/EU to create legal certainty for the performance of public tasks within the public sector. The ongoing reform of European procurement law should therefore not restrict these instruments, but rather strengthen them in a way that is practical, legally certain and sustainable.

We also stress that there is no evidence that public-public cooperation harms competition, quality, or value for money. On the contrary, it can improve efficiency, support long-term investment, create economies of scale, and strengthen public service delivery. Therefore, we call for clearer legal certainty in Article 12 of the Public Procurement Directive, ensuring that cooperation between contracting authorities remains protected and transparent.

The European Court of Justice has significantly refined the criteria for in-house procurement, whilst taking into account the basic principles of public procurement law, such as equal treatment and fair competition. In-house contracts are already subject to strict requirements regarding market conformity and price appropriateness, which rules out hidden cross-subsidies. Furthermore, in-house contracts are subject to scrutiny by courts of auditors and internal audits.

Legal certainty under Article 12 should include clarification that public authorities are not required to carry out a prior competition test before choosing in-house provision or public-public cooperation. It should also ensure that joint control remains practically workable for cooperation involving multiple public authorities, and that the activity criterion is applied in a functional way, taking into account activities that are intrinsically linked to the public task.

**Inhouse and public-public cooperation are an indispensable part of the solution for effective, resilient and citizen-centred public services in Europe.**

---