

CEEP opinion on the Local Public Enterprises in Times of Crisis

1. Local public enterprises are enterprises with the majority share held by public authorities as well as providers of services of general interest. Building necessary infrastructure they guarantee the functioning of municipalities, cities and regions all over Europe. They provide the population with services such as energy and water, waste management, waste water disposal, public transport or public swimming pools. Local public enterprises are committed to public purposes; they have broad aims such as a high level of security of supply, environmental awareness or urban development. In addition, their revenues usually go to their public shareholders or owners, i.e., normally these revenues remain in the region.

2. During the last 30 years public enterprises had to cope with significant pressure to increase efficiency, although the definition of efficiency often was quite narrow, focussing exclusively on economic aspects instead of taking also into account social or economic criteria or local employment. However, public enterprises were for large parts regulated by EU policy makers, as public enterprises were forced to act like private ones: via tendering guidelines, state aid policies, policies of liberalisation or deregulation. In addition, the European Court of Justice has pronounced several judgements that have narrowed room for manoeuvre even more for public enterprises and that have, in addition, caused significant uncertainty regarding the application of European law for public services. In total that means less entrepreneurial freedom for local public enterprises.

3. During the past decades monopolies have been removed and the state has withdrawn more and more from the provision of services of general interest. Only during the past couple of months, since the economic crisis began and its consequences became visible, the perception of the economic activity of local public enterprises has changed and led to a better assessment about what local public enterprises are achieving.

In the light of the economic crisis the majority of public enterprises perform well. Even more, many of them serve as stabilisers or stimulate economic growth:

- Public enterprises usually pursue a strategy that does not target short-term profit maximisation, but long-term sustainable growth. Due to the requested minimisation of risks public enterprises are much less vulnerable to financial and economic crisis than enterprises that plan on short notice.

- It is also part of public enterprises' philosophy not to achieve surpluses profit at public expenses. Therefore most enterprises that are affected by the crisis are stabilizing their operating result without state-financed short-term-work.
- Against the trend public enterprises invest even in the midst of this economic crisis. Most of these investments are done locally or on-site. That way the local economy is strengthened, in particular small- and medium-sized businesses. As a consequence these investments also stabilise the local and regional labour market as jobs are supported and even created.
- Local public enterprises contribute significantly to urban development, even in times of crises. Local public enterprises help to realise important urban development projects. Furthermore they take into account much more than other enterprises not only economic aspects, but also ecological, social or historic considerations. They still support local authorities in achieving multiple aims of urban development.
- In times of economic crisis environmental aims are often neglected. Local public enterprises though make a valuable contribution to environment and climate politics, for instance by ecologically-friendly public transport systems or by low emission energy supply such as combined heat and power plants (CHP) or by the promotion of renewable energies.

4. Against the background of the current crisis and with respect to some suboptimal consequences of liberalisation policies in some EU Member States one recently can recognize a trend towards "re-municipalisation". Cities and municipalities decide to have services such as energy supply provided by their own enterprises once again. The financial and economic crisis thus highlights the general value of local public enterprises.

Local public enterprises provide a particular positive effect on welfare as their achievements go far beyond the services they deliver compared to other enterprises.

5. Even though the additional benefit of local public enterprises becomes particularly visible today, they have to cope with several challenges, some of which are internal ones while others have external reasons:

- In liberalised sectors competition is likely to grow as more and more private competitors emerge, for example, the energy or the waste disposal sector. This is promoted in particular by European horizontal and vertical legislation. But it is particularly difficult for public enterprises that on the one hand they are subject for instance to European public procurement law, meaning they have to act with cuffed hands, while on the other hand they have to compete with private enterprises, whose hands are not tied in that way. So in order to get the balance right again a level playing field is needed.
- During the past years a trend had emerged in local policies to act on quite market-based principles, for instance, by focussing on growth markets. Services that had previously been provided by public authorities or enterprises have been completely or partly privatised. But privatization is no panacea. That should be kept in mind.

- Regulation via climate policy is dense and will increase substantially in the coming years. Shortly, Member States will have to implement the EU's aims in order to achieve a reduction of greenhouse gases, a rise of renewable energies and a rise in energy efficiency. Local public enterprises will contribute substantially to these goals even if they are in a more difficult situation concerning competition than many private competitors which can in many Member States influence market conditions much more by size and market position.

6. There is an urgent need for a reliable legal framework. For instance there is a need to clarify that public in-house service contracts can be granted to own public companies without using a tender procedure. These clarifications should not only be delivered by case law of the European Court of Justice. Services of general interest need to have their own place and a reliable legislative framework in the European single market, as they are part of the European social and economic model.

7. At the moment, public enterprises that are 100% owned by their public owner have the status of an "In-house company". In its "Stadt-Halle" ruling the European Court of Justice has explained that even a minor share of a private partner is the end of the "In-house" status of a company. It is therefore considered to be a third party and object to European public procurement rules and the European Court of Justice's ruling regarding service concessions. The latter would imply that the public authorities are obliged to use a tendering-like procedure when entrusting a service provider, even if they are the by far dominating owner. In future this could even be valid for their grids. That way, public enterprises could lose direct control over important infrastructure. This should be avoided.

8. Experiences from liberalised energy markets show that local authorities who have not sold their public enterprises are often able to offer better services at affordable prices compared to their private competitors. Furthermore, privatisations simply lead to a situation where local authorities lose an important tool for urban development.

9. Without any doubt the recent economic crisis has stopped the absolute faith in the market. Whereas some time ago public activities were considered as being "uneconomic" and "out of fashion", now the state and public actors are welcomed again. It now becomes particularly clear that public enterprises are not privatising profits while socialising losses like others do. This development should be welcomed.

10. Against the background of the developments outlined above and the challenges that are coming up in future CEEP calls on European policy makers to take a positive attitude towards local public enterprises. The current crisis has proven the importance of well-balanced economic strategies and the necessity of broad aims that go beyond pure economic profit.

CEEP calls on policy makers to actively promote a reliable legal framework that allows local public enterprises to continue their sustainable economic activities on a solid long-term basis.