

The Court's report on government computer companies

The Court reported to the federal Parliament on the collaboration modalities between social security public institutions (SSPI) and the computer non-profit association Smals in charge of managing their data processing operations. In its audit report, the Court pinpointed various flaws and formulated a range of recommendations.

An increasing number of public institutions are of the opinion that a joint entity would be able to ensure a more efficient management of their data processing operations. To this end they decided to set up a joint separate company or non-profit association. The set-up of an autonomous entity was selected because it allows a more flexible implementation. This flexibility also applies to the salary and working conditions offered in order to attract the data-processing specialists needed. Government, however, keeps a direct grip on the functioning of these computer entities through the designation of delegates to the board.

In spite of a possible high impact of such arrangements, surprisingly enough, little is known about this collaboration relationship. Public procedures usually applicable for awarding a public contract are not used. Admittedly, computer management is formally entrusted to autonomous private entities, but in practice they just operate as if they were a government unit. Provided this close relationship is evidenced by a broad supervision and a prevailing influence exercised by the government on the entity's operation, the (European) case law admits an exemption from the legislation on public contracts.

The Court decided to scrutinize the situation and focused its audit on the social security sector. For years, the Belgian social security system has performed a pioneering role - also on the international front - in implementing the so-called *e-government*. Computer applications for collecting contributions and granting security benefits which were developed by the non-profit association Smals for the SSPI account for a significant share of the input. From 2003 to 2007, social security public institutions (such as the National Office of Social Security (ONSS/RSZ), the National social Insurance Institute for the Self-Employed (Inasti/Riziv) and the National Employment Office (Onem/RVA) have paid out together about 463 million euros to Smals. The significant role played by this association is also evidenced by the fact that it employs over 1500 employees.

In its report, the Court pointed out several closely related flaws that might possibly also apply for computer companies at other public administration level :

The board, the own services or supervisory bodies of each SSPI have little or no insight into the collaboration relationship with the non-profit organisation Smals. There is hardly any accountability for the awarding of contracts to Smals, nor about the way contracts have been implemented or what the final cost has turned out to be. There is no information either about the risks or advantages linked to the membership or the participation in the management of this association. It does not, for example, appear clearly to whom the non-profit association provides computer services and what commitments or guarantees are covered by these contracts.

The lack of transparency is related to the organisation of the supervision of the collaboration. This supervision is in the hands of a few SSPI's senior officials that are also administrators of this association. In this capacity they are often the only ones able to assess the validity of Smals' invoices. Their organisation's accounts services and supervisory bodies cannot inspect the codes and the rate structure used to draw up the invoices. The same applies, for instance, to the terms under which contracts would be subcontracted by this association. As a matter of fact, all this also compounds the Court's audit activities with the SSPI.

Thanks to this collaboration fixed expenses are shared and the association's structure allows it to operate on a cost price basis. This does not, however, provide the assurance that a computer project has been implemented according to market-oriented conditions. The advantage of a lower hour rate can, for instance, be reduced to nothing by a longer lead

time. Moreover the SSPI sustain the financial drawbacks of all possible problems occurring in a contract implementation process : the association has no working capital and has to invoice all costs incurred. Information about market conformity is provided only to management members. In each case, no direct market verification is performed in the light of public contract legislation. In this respect, the Court reminds that compliance with the strict requirements of broad government supervision should be ensured.

Originally, the non-profit organization was established to perform computer applications. This organization, however, concurrently provides study days and/or advertisements for its members and information or advice about social security via a *contact centre*. Moreover, in certain cases, the association has also seconded lawyers, staff specialists or accounting officers to the SSPI. This wide service package is said to find a justification in the fact that it always involves computer applications. The Court questions this interpretation. In so doing, the implementation tasks and the first-line service provisions of social security public institutions can be shifted nearly unnoticed to a private company without, as things stand now, easy control on it.

The SSPI have all responded positively. Various measures have been contemplated to improve transparency and allow for a wider supervision.