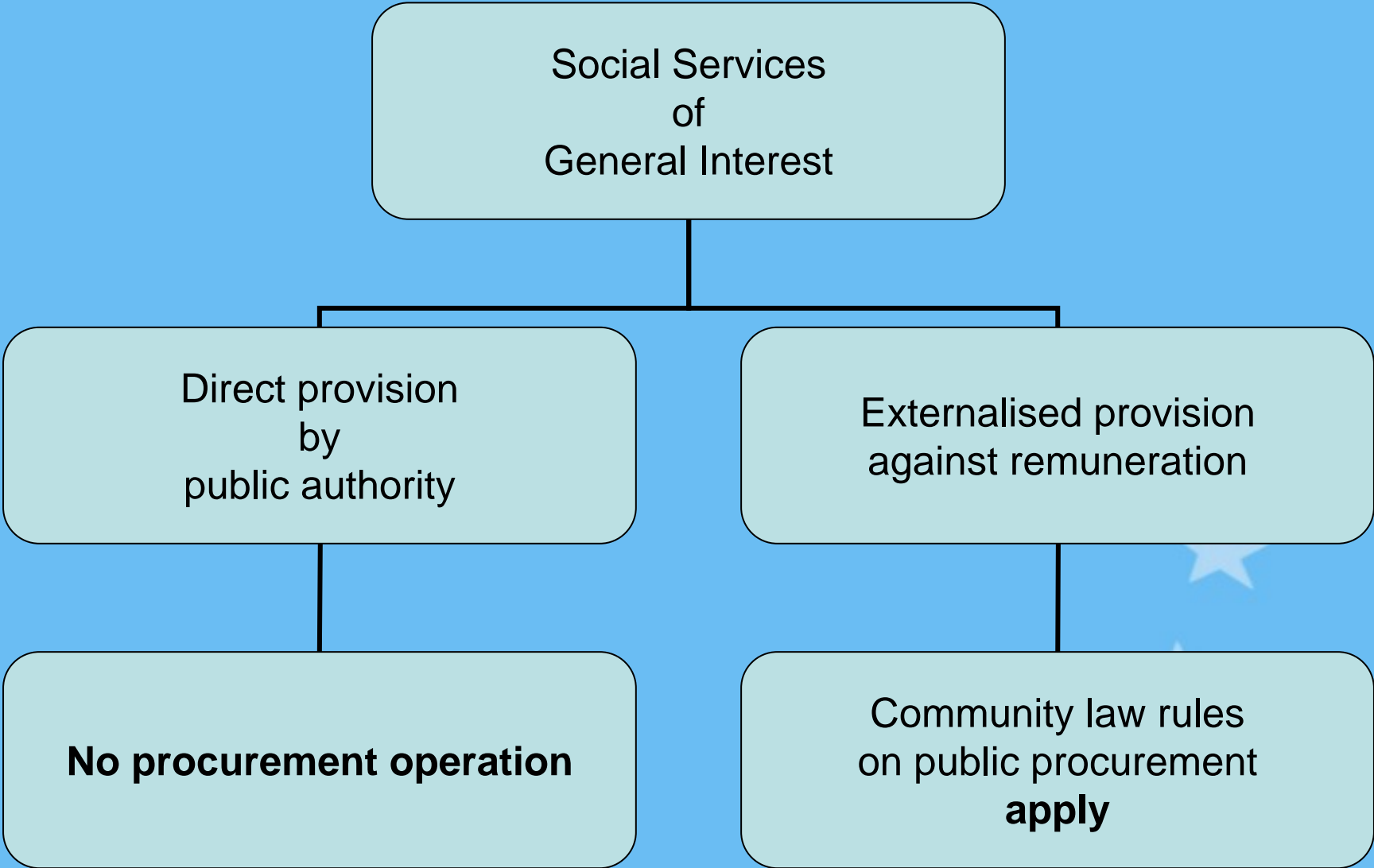


Social Services of General Economic Interest: Public Procurement Aspects

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Variant of Direct Provision IN-HOUSE

- Separate legal entity
- Strict control of the contracting authority (authorities)
- No or very limited business with third parties

Externalised provision without remuneration

- Transfer of competences
- Mutual assistance

**Externalised provision of social services
against remuneration**

**Public service
Contract**

Provision of a service
Remuneration paid by public authority

Service concession

Right of the concessionaire
to exploit the service

In the area of **social services**
similar obligations
for the award of public service contracts and
service concessions

- **EC law** applies only in cases presenting a **cross-border interest**
- **Only the basic principles** of EC law apply
 - Non-discrimination
 - Transparency

Basic principles of EC law

- equal treatment, non-discrimination on grounds of nationality
- transparency, equal access: adequate advertisement
- fair and impartial award process
- effective judicial protection

Public – private partnership

- Choice of private partner has to be subject of a tender procedure
- Communication on IPPPs

Public – public partnership

- Joint control over in-house entity
Common pursuit of mission of general interest
- Joint procurement
- Transfer of competences
- Mutual assistance
- Networks - Exchange of best practices

Definition of social service to be rendered

By drafting detailed specifications based on their particular requirements and conceptions, public authorities can obtain **tailor-made services** delivering best possible **quality** adapted to their **specific needs**.

- overall concept of the service
- specific needs of certain user groups, socio-economic context, involvement of users
- compatibility with existing structures
- also possible as award criterion
- **Limit: Discrimination**

Local context

Contracting authority can ask for

- local infrastructures to be set up by the successful tenderer
- knowledge about existing local infrastructures to be acquired by the employees providing the service
- experience of the relevant services in a similar environment

Limit: Local context requirements must not go beyond what is necessary to ensure an adequate service provision. They must under no circumstances create unjustified advantages for existing local service providers.

Non-profit organisations

- A public service contract or concession might under exceptional circumstances be reserved to non-profit organisations if such a restriction is provided by a national law that is compatible with Community law.
- Procurement rules are meant to guarantee fair competition among all bidders regardless of their legal form (exception sheltered workshops).

Public procurement – State aid

- Obligation to provide a service against remuneration
- as opposed to financing decision with the obligation to reimburse the grant
- Indicators: competence of the contracting authority, terms of the service clearly described; full remuneration by contracting authority