

Abstract

Consultancy contracts awarded by ministerial cabinets

The Court of Audit examined the consultancy contracts awarded by the Flemish ministerial cabinets between 22 July 2004 and 31 December 2007. On the basis of Art. 8 of the Flemish decree on ministerial cabinets, the latter were entitled to attract external expertise through consultancy. When the contracts were awarded, it appeared that the trust relationship between a minister and his consultant runs rather counter to the principle of competition. By repealing Art. 8 from 1 January 2008, the Flemish government implemented the recommendations of the Flemish Ombudservice. The Court of Audit reminds the ministerial cabinets that, when awarding and implementing contracts, they must always comply with the legislation on public procurement, on public accounting and on the formal motivation of administrative acts. The protocol concluded between the Flemish Parliament and Government, which requires an annual report on consultants, experts and cabinet staff, should be adapted to the new situation. In order to ensure the transparency of the cabinets' composition, the protocol should be brought into line with the decree on ministerial cabinets.

Introduction

Under Art. 8 of the 14 September 2001 decree of the Flemish Government (decree on ministerial cabinets), the ministers were entitled to resort to experts or consultants for time-limited specific contracts. On the one hand, consultancy contracts are governed by the law on public procurement, which, most notably, enforces the principle of competition. On the other hand, experts and consultants are considered to be full staff members of the ministerial cabinet and they have a trustful relationship with the minister. There is obviously a certain amount of tension between this trust and the principle of competition. On 23 November 2007, the Flemish Government decided to delete Article 8 from 1 January 2008 on, thereby complying with the Flemish Ombudservice's recommendations. At the Flemish Parliament's request, the Court of Audit examined the consultancy contracts awarded by the ten Flemish ministerial cabinets between 22 July 2004 (the start of this legislative term) and 31 December 2007. The 68 contracts were all awarded by negotiated procedure without prior advert or against accepted invoice. Most of these contracts concerned legal advice services. The ministerial cabinets resorted to consultancy to a greater or lesser extent depending on the minister.

Compliance with the regulations governing consultancy contracts

The Court of Audit noted numerous infringements of the legislation. For example, a negotiated procedure should be exceptional, as contracts should in principle be awarded to the lowest or the best bidder. Following the principles of good administration and the obligation to substantiate decisions, the contracting body must justify, in every case, why precedence was given to a negotiated procedure and why there was no call for tenders. The Court of Audit found that in most cases the ministerial cabinets did not state the grounds for the negotiated procedure or that the reasons stated were insufficient. There was generally no call for competi-

tion, most of the time without any justification. Other infringements concerned, for instance, contract splitting to avoid exceeding the relevant thresholds, tacit renewal, invoicing and guarantees. For several contracts, there was no complete file available in the ministerial cabinets, which made it sometimes impossible for the Court of Audit to establish the rights and duties of the parties.

Report on the consultants and experts

Under the terms of the protocol agreed between the Flemish Government and the Flemish Parliament on 17 April 2001, the Government sends every year to the Parliament a list of all cabinet staff members, including the experts and consultants. For the 2004-2006 period, the annual reports were incomplete and imprecise, notably as far as consultants were concerned. There were, however, some very notable differences from one minister to another. In the last report (as of 31 December 2007), the situation was back to normal. Nevertheless, the yearly report did not always sufficiently comply with the decree on ministerial cabinets and it was therefore not always possible to assess whether the Government complied with its own decree in matters of ministerial cabinet make-up.

The contracts mentioned in the annual reports for the current legislative term amounted to 0, 9 million euros. According to the Court of Audit's data, the spent amount is, however, 1, 7 million euros. The annual reports included only half of the real expenses, which means that the intended transparency for consultancy contracts was not achieved.

Government's response to Flemish Ombudservice's recommendations

The Flemish Government reacted positively to the recommendations made by the Flemish Ombudservice in its report of 9 October 2007, as appears from the repeal of Article 8 of the ministerial cabinet decree, from an increased control of the compliance with the law on public procurement and the strengthening of internal control, and also from the introduction of a deontological code for staff members of ministerial cabinets.

Minister's response

In his letter of 13 June 2008, the Flemish minister-president took note of the audit's results. Together with the other measures, the repeal of Article 8 of the cabinet decree should contribute to an honest and correct handling of financial files in ministerial cabinets. As for the annual reports presented to the Flemish Parliament, the minister-president committed himself to harmonizing the report's plan with the modified decree on ministerial cabinets and to concluding a new protocol with the Parliament's president.