

# GUIDE TO PUBLIC-PUBLIC SHARED SERVICE CONTRACTS

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When was the last time you updated your Highway Code material on the TECKAL test and EU public-public shared services?

Especially since February 2015 when the EU guidance on public-public activity was amended to make the law clearer.

To update your material you may want to download the 10-page, Crown Commercial Service's Guidance on public-public contracts. It was originally issued in February 2015, but has been updated regularly since.

## What does the guidance cover?

In the introduction to the guide, it confirms that: *The new provisions on public-public contracts aim to codify, clarify and develop the case law on whether contracts between public bodies should be subject to the public procurement rules or not.*

The two most quoted cases relating to this are the Teckal case and Hamburg case, both clusters of councils being challenged when they came together to deliver services between, or on behalf of each other, without tendering to the private sector.

## What are the headlines?

Citing the sections in the EU rules, it summarizes the cumulative conditions for the Teckal exclusion as:

- Where the contracting authority exerts on the 'supplying authority' a control similar to that which it exercises over its own departments, and
- Where more than 80% of the activities of the supplying authority are performed for the buying authority or by other bodies controlled by it, and



- Where there is no direct private capital participation in the 'supplying authority'

The cumulative conditions, for the Hamburg exclusion to be met, are:

- The participating authorities co-operate to perform public services they provide, meeting common objectives, and
- The co-operation is for public interest reasons only, and
- The participating authorities perform less than 20% of the co-operative activities on the open market

## Pull the guide out at meetings...

The caveat when it comes to EU procurement and the SSA taught programmes is that there is no intention to make you an expert.

However, it is important that you have enough of an understanding to suggest to colleagues that they may need expert advice, if you feel they are going down a wrong alley.

Taking a copy of the guide to the meeting would support your case for suggesting that expert advice may be required.

You can download the guide from:  
<https://www.gov.uk/guidance/transposing-eu-procurement-directives>