

Mediation for Municipalities & The Necessity to Think as Entrepreneurs
or
„Do not kill the cow (taxpayer) who gives milk (pays taxes)“
- Comparative Remarks from a German Perspective

O. Introduction

Municipalities and other local or territorial authorities are privileged and can charge certain types of taxes within their physical territory. This principle has not changed since ancient times.

What has changed is the flexibility of companies and investors that can rather easily take their capital and move across border-lines to another country. In the EU this is even one of the essential economic freedoms: the freedom of establishment.

This is contrary to the old German (and Roman) principle of keeping their people and companies factually prisoners, i.e. not letting them cross border lines without permission.

The new global or at least Euro-wide competition is a thorn in the side of the municipalities and territorial authorities that are responsible for keeping its local infrastructure intact for its citizens. Deserted or failed villages and cities where land or houses are being given away for 1 EUR are well known in Northern Germany and Southern Italy. So we have a lot in common.

This calls for a changed attitude of regional and local authorities. To be sure, one can aggressively levy and enforce taxes and create a hostile environment. But the latest approaches of German authorities even favouring mediation for dispute resolution over lengthy court proceedings paint a different picture. German local authorities and municipalities start to think like entrepreneurs and in terms of efficiency.

The reasons for this are purely economical and for the long-term benefit of the municipalities. The following three areas of interest shall serve as examples

A. Joint Projects: The new town hall as PPP or sale & lease back

A municipality (Pattensen, close to Hannover) wanted to erect a new town hall as the old one was too small and partly falling physically apart but had not enough funds. So an official call for tenders was started. An investor was found and the city agreed to lease the building for 30 years at a fixed rate.

Private Public Partnership has flourished in Germany to the benefit of the general public, the local municipality

B. Attracting Investors & creating local Jobs

- Cheap, fully developed land for investors, e.g IndoFood from Indonesia wanted to invest in the Hannover region but opted for Serbia instead!
- Lower or alleviated taxes for a certain period of time.
- No subsidy without strict obligations, e.g. creating jobs.

C. Keeping Companies and Local Jobs

This can be done by avoiding open disputes and resort rather to alternative dispute resolution, e.g. mediation. Also local municipalities have the competence to enter into mediation finding a compromise and a new, binding agreement, thereby creating a different atmosphere where taxpayers, particularly those who create jobs, are happy and

engaging in the local communities. Word of mouth spreads, and other investors flock to that municipality.

D. Mediation as a Efficient Chance Solving Disputes

There are always disputes between taxpayers (companies) and local authorities.

German authorities, however, have taken to alternative dispute resolution, particularly mediation because

- a) of the 2008 EUR Mediation Directive,
- b) excessive delays in court proceedings and
- c) efficient, short-term solutions. Even arbitration is being used, provided the project or company (potential or actual taxpayer) is important enough.

The advantage of mediation is not just efficiency because of speedy proceedings but also confidentiality. This keeps relationships with taxpayers and companies unharmed in contrast to court proceedings that generally produce winners and losers.

E. Summary

As there is no ideal world, everything has to be a compromise in law and legal reality.

Mediation avoids open confrontation that results in final and long-lasting debilitating strife and a winner-loser-pattern. Municipalities do not have to sit on the high horse and demand timely payment of all taxes from their citizens and companies. If tax payers shall remain in the vicinity, there has to be a different attitude as taxpayers may leave nowadays for more attractive venues elsewhere. So municipalities are part of the global competition, too. This should be reflected in promoting mediation and dialogue, and not enforcing taxes and other forms of public privileges aggressively.