

The Reform of EU Directives on Public Procurement: Towards more Flexibility

**Proposals of the Commission for
Directives on Public Procurement
(replacing Directives 2004/18/EC and 2004/17/EC)
20 December 2011**

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Objectives of the Reform

1. Simpler /
more flexible
procedures

2. Strategic use

3. Better access
(SMEs, cross-border
trade)

4. Sound
procedures

5. Governance / Professionalisation of procurement



International context

- *Full compliance with WTO Government Procurement Agreement (GPA) and bilateral trade agreements (e.g., thresholds, procedures)*
- *Full use of flexibility under GPA (simplified procedures for sub-central authorities, shortening of deadlines,...)*

Scope of proposals

- **Two proposals**, replacing **Directive 2004/18/EC** (public procurement) and **Directive 2004/17/EC** (procurement by utilities)
- **No changes** to the Directives on **Defence** procurement (2009/81/EC) nor on **Remedies** (89/665/EEC and 92/13/EEC, both as amended by 2007/66/EC)
- Other parallel proposals :
 - **Proposal on concessions**
 - **Proposal for a Regulation on International Access**

State of play

- Proposals adopted by the **Commission** 20 December 2011
- **Council**
 - General approach 10 December 2012
- **European Parliament**
 - Draft Report issued by Rapporteur in IMCO (Internal Market and Consumer Affairs)
 - IMCO report 18 December 2012
 - Negotiating mandate on 21 February 2013
- **Trilogue**: March 2013 until June 2013

Simplification



More flexible procedures

- Possibility of increased use of “**competitive procedure with negotiation**” (Art. 24 & 27)
- Simplification/added flexibility for **competitive dialogue, framework agreements and DPS** (dynamic purchasing systems)
- Simplified publication for **sub-central contracting authorities**: prior information notice replaces contract notice (Art. 24 (2)(b))
- General review of **deadlines**

Reducing documentation requirements

- *Exhaustive list of requirements for selection criteria (Art. 56(1))*
- *Self-declarations (Art. 57)*
- *e-Certis (Art. 58)*

Step up e-procurement

- *Mandatory full electronic availability of tender documents (Art. 51)*
- *Fully electronic communication = mandatory 2 years after transposition deadline (Art. 19.7)*
- *Improved e-tools:*
 - ***simplification of DPS (Art. 32)***
 - ***e-catalogues (Art. 34)***
 - ***e-signatures (Art. 19.5)***

Strategic use of public procurement



Guiding principles

- *No abandoning of link with the subject matter, but softening (production process, commercialisation, externalities – Art. 66, 67)*
- *Facilitate handling of societal requirements through labels (Art. 41)*
 - **Specific label may be requested if requirements linked to the subject-matter of the product**
 - **Equivalent labels must be accepted as well**
 - **Possibility for economic operators to provide alternative evidence where no access to the label in due time**

Strategic use: Environment

- *Production process related requirements*
 - in technical specifications (Art. 40) and
 - as award criteria (Art. 66)

Example: use of energy-efficient machines for manufacturing

- *Life-cycle costing optional, allowing to take into account externalities if verifiable and monetisable (Art. 67(1)(b)) Existing common EU methodology = mandatory life-cycle costing (Art. 67(3))*

Strategic use: Social aspects

- *Production process related requirements*
 - as award criteria (Art. 66)
 - in contract performance conditions
 - requirements must concern
 - protection of health of staff or
 - social integration of disadvantaged persons (Rec. 41)
 - Example: recruitment of disadvantaged persons for the provision of the service

Strategic use: Social aspects

Specific regime for Social services

- *Simplified rules:*
 - Higher threshold – EUR 500 000 (Art. 4 (d))
 - Below threshold: typically no-cross-border interest (recital 11)
 - Above threshold: Member States free to decide on procedures, only requirement: ex-ante (+ ex-post) OJ publication (Art. 75) + non-discrimination (Art. 76 (1))
- *Member States must allow contracting authorities to take into account quality criteria (Art. 76 (2))*

Strategic use: Innovation

Innovation partnership (Art. 29)

*The contracting authority cooperates with a company selected in a regular competitive tender procedure for the **development and purchase** of an innovative product, work or service, which does not exist on the market*

Better access for SMEs and start-ups



Better access for SMEs and start-ups

- **Division of contracts into lots** (Art. 44): “apply or explain” - EUR 500 000 / EUR 5 Million
- **Turnover cap** (Art. 56.3) (economic and financial standing): max. 3x the estimated contract value
- **Reduced documentation** requirements, self-certification, use of existing databases

Sound procedures



Sound procedures

- *Minimum safeguards against conflicts of interest and other illicit behaviour (Art. 21, 22)*
- *Avoid unfair advantages because of prior association (Art. 39)*
- *Strengthen rules on abnormally low tenders (Art. 69)*
- *Clear rules for contract modifications during execution (Art. 72)*

Contact

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