

Modernisation of public procurement

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PURPOSE : to launch a consultation on the modernisation of EU public procurement policy (Commission Green Paper).

CONTENT: public procurement plays a **key role** in the [Europe 2020 strategy](#), calling on public procurement to: (i) improve framework conditions for business to innovate; (ii) support the shift towards a resource efficient and low-carbon economy, e.g. by encouraging wider use of green public procurement, and (iii) improve the business environment, especially for innovative SMEs.

Public procurement policy must also ensure the most efficient use of public funds and procurement markets must be kept open throughout the EU. In the face of these challenges, there is a greater need than ever for a **functioning and efficient European Procurement Market**.

Many stakeholders have voiced demands for a review of the EU public procurement system to increase its efficiency and effectiveness. The Commission has therefore announced in the [Single Market Act](#) that it will conduct wide consultations in order to make legislative proposals by early 2012 at the latest.

The current generation of public procurement Directives, namely Directives 2004/17/EC and 2004/18/EC, are the latest step in a long evolution that started in 1971. By guaranteeing transparent and non-discriminatory procedures these Directives principally aim to ensure that economic operators benefit fully from the basic freedoms in the field of public procurement. . Given the key role of public procurement, the existing tools and methods should be modernised. Several **complementary objectives are to be achieved**

(1) Improve the toolbox for contracting authorities and ensure a more accessible European procurement market: the first objective is to increase the efficiency of public spending, which includes, the search for best possible procurement outcomes (best value for money). To reach this aim, it is vital to generate the strongest possible competition for public contracts awarded in the internal market. Distortions of competition must be avoided.

At the same time, streamlined procurement procedures with targeted simplification measures meeting the specific needs of small contracting authorities could (i) help public procurers to achieve the best possible procurement outcomes for the least possible investment in terms of time and public money; (ii) facilitate the participation of both SMEs and cross-border bidders. In fact, cross border-participation in EU public procurement procedures remains low.

(2) Strategic use of public procurement to meet new challenges: a second objective is to allow procurers to make better use of public procurement in support of common societal goals: These include protection of the environment, higher resource and energy efficiency and combating climate change, promoting innovation and social inclusion, and ensuring the best possible conditions for the provision of high quality public services. Emphasis could be placed on moving focus from lowest initial price to lowest life-cycle cost.

(3) Guarantee the fairness and objectivity of the procedures: developing EU public procurement law could also be envisaged to tackle important issues that are so far not sufficiently addressed, such as preventing and fighting corruption and the question how the access of European undertakings to third country markets can be improved. In addition, the review of the legislative framework will also be an opportunity to examine if certain basic notions and concepts should be refined to ensure better legal

certainty for contracting authorities and undertakings. The review may present certain opportunities to increase convergence between the application of the EU public procurement and State aid rules.

The Green Paper **reflects a number of ideas as to how the various objectives could be better achieved**. It recalls, however, that the scope for possible legislative modifications is not unlimited. Legislative changes will have to be consistent with EU international commitments or may require the opening of appropriate negotiations with all partners concerned on possible requests for compensation.

Concessions are not dealt with in this consultation; they have been the subject of earlier separate consultation exercises and impact assessment. The Commission intends to propose legislation with a view to ensure greater legal certainty for regional and local authorities and economic operators throughout Europe and at facilitating the development of Public-Private partnerships. E-procurement issues are covered by a separate [Green Paper](#) which was published on 18 October 2010

In parallel with the current Green Paper, the Commission is undertaking a **comprehensive evaluation of the impact and cost-effectiveness of EU public procurement policy**. The evaluation will gather market-based evidence on the functioning of current procurement legislation with a view to providing empirical insights into the areas that need improvement. The results of this new research will be made public in summer 2011.

Together with the results of the evaluation, contributions from stakeholders to this Green Paper will feed the reflection on the future reform of the EU public procurement rules, which will lead to a **proposal for legislative reform**.

The Commission invites all interested parties to submit their contributions before 18 April 2011.