

# Public procurement

2011/0438(COD) - 20/02/2012

The Council held an **orientation debate** on the modernisation of public procurement policy. It was the first ministerial debate since the presentation by the Commission, in December 2011, of the proposals for a major overhaul of public procurement rules across the EU.

The outcome of the debate provides guidance for the continuation of technical work. The intermediate target is to reach an agreement on the main principles of the reform at the Competitiveness Council in May, with the final purpose of getting the **reform approved in co legislation with the European Parliament before the end of 2012**.

The three proposals for modernising public procurement are:

- a **draft directive setting up the new legislative framework** (replacing directive 2004/18/EC);
- a draft [directive](#) on procurement by entities operating in the water, energy, transport and postal services (replacing directive 2004/17/EC);
- a draft [directive](#) on the award of concession contracts.

The debate focused on the new general legal framework. More specifically, it concentrated on **two aspects** put forward by the Presidency:

**1. The degree of flexibility that should apply in the use of competitive procedures with negotiation:** compared to the current rules, the Commission proposes to increase the list of cases in which member states may allow for the competitive procedure with negotiation, but not so as to allow unrestricted access to this procedure.

Ministers are invited to comment on the **following questions**:

- Does the Commission's proposal provide procuring entities sufficient access to the competitive procedure with negotiation? If not, should access be as unrestricted as possible?
- How can it be secured that more flexibility does not lead to unequal treatment?

A majority of delegations stated that a wider use of negotiated procedures in public contracts should be possible and that certain safeguards should also be put in place to ensure equal treatment for tenders. Some other delegations would prefer a limited use for this procedure, in line with the Commission proposal.

**2. Rules for certain categories of services: social, cultural, health, etc:** the Commission proposes abolishing the current distinction applying to certain services that can be externalised under simpler regimes (social, cultural, health, education, etc.), so that standard rules would apply to all services unless explicitly exempted.

Ministers are invited to comment on the **following questions**:

- Is the Commission right in proposing a lighter regime for certain social, cultural, educational and health services?
- Should other services also benefit from the special regime?
- Has the Commission struck the right balance between promoting efficiency through competition and delivering on the objective of lighter public procurement rules?

Many delegations emphasised that the new system should strike the right balance between promoting efficiency through competition in contract awards and delivering on the objective of lighter public procurement rules for certain services.