

Procurement in the water, energy, transport and postal services sectors

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The Committee on the Internal Market and Consumer Protection adopted the report by Marc TARABELLA (S&D, BE) on the proposal for a directive of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors.

The committee recommends that Parliament's position adopted at first reading, according to the ordinary legislative procedure, should be to amend the Commission's proposal as follows:

Public service: the application of public procurement rules should not interfere with the freedom of public authorities to decide how they carry out their public service tasks. This Directive should neither affect the social security legislation of the Member States nor should it deal with the liberalisation of services of general economic interest, reserved to public or private entities, or with the privatisation of public entities providing services.

Public procurement: the revision and the modernisation of the current public procurement rules aim to increase the efficiency of public spending, **ensure value for money**, facilitate equal access and fair participation of small and medium-sized enterprises and craftsmen in public procurement, both at local and Union- wide level, and enable procurers to make better use of public procurement in support of **sustainable production and consumption**.

Scope: service contracts in the fields of civil defence, civil protection, and hazard prevention should be excluded from the scope of this Directive. Those fields include, in particular, emergency rescue work, which should be defined as separate from ambulance services.

Procurement and innovation: this Directive should contribute to facilitating the public procurement of innovation more generally. The procedure should be based on the rules applying to the competitive procedure with negotiations and contracts should be awarded on the sole basis of the **most economically advantageous tender**.

When setting the terms and conditions for procurement, contracting entities should be allowed to establish innovative characteristics, including best available techniques, as a criterion relating to the subject of the contract concerned.

SME participation: public procurement should be adapted to the needs of small and medium-sized enterprises (SMEs). In order to encourage the involvement of SMEs in the procurement market, and to enhance competition, contracting entities should be encouraged in particular to give consideration to dividing contracts into lots, especially for products that require quality for welfare, such as food for passive consumers in hospitals, schools, care for children and older people.

Award criteria: contracting entities awarding a contract on the basis of the most economically advantageous tender criterion, should determine the award criteria on the basis of which they will assess tenders in order to identify which one offers the best value for money. The determination of those criteria should include **economic, environmental and social characteristics**. Furthermore, contracting entities should be given the possibility to exclude candidates or tenderers for violations of environmental or social obligations, also in compliance with general principles of the Directive.

Social aspects: in order to better integrate social considerations in public procurement, procurers should include, in the award criteria and in contract performance clauses, characteristics related to the **working, employment and environmental conditions** and require the production of **certificates or labels** to be drawn up by independent bodies attesting compliance by the economic operator with rules and standards set in those fields.

Member States should ensure that **economic operators comply with the environmental, social and labour law provisions** which apply at the place where the works are executed, services provided or goods produced or supplied, as set out in international conventions listed in Annex XIV and in Union and national law as well as in collective agreements concluded in accordance with national law and practices which respect Union law.

Contracting entities should be permitted to choose an award criterion which refers to the fact that the product concerned is of **fair trade origin**.

Subcontractors: Member States should ensure that subcontractors also respect all mandatory legal, regulatory and administrative provisions in force in the Member State of contract performance. To this end, Member States may provide for a **system of liability** throughout the subcontracting chain.

Modernisation of procedures: Members proposed that the submission of building information electronic modelling tools for works contracts should be encouraged in order to modernise the procurement process and ensure greater efficiencies are achieved in the public procurement of works covered by this Directive, in particular in relation to taking into account lifecycle costs and sustainability criteria.

Transparency: Members considered that traceability and transparency of decision-making in procurement procedures is essential for ensuring sound procedures, including effectively fighting corruption and fraud. Contracting authorities should **keep copies of concluded high-value contracts** to be able to provide access to those documents to interested parties in accordance with applicable rules on access to documentation.

Data protection: for all procurements, technical specifications shall be drawn up so as to ensure that the products, services and works subject to the contract meet the requirements of data protection law at the time of the design of the processing of personal data (data protection by design).

Uniform interpretation: the Commission and the Member States should therefore ensure that this Directive is transposed taking into account the major impact of the public procurement national legislation on the process of accessing Union funds. Therefore it is of utmost importance for the Member States to avoid as far as possible any fragmentation in interpretation and application, while also contributing to the simplification at national level.

Promoting Union values: given that the internal market and international markets are increasingly interlinked, Members considered that Union values, such as transparency, a principled stance against corruption, the principle of reciprocity and the advancement of social and human rights should be appropriately promoted in procurement policies.