Award of public contracts: improving the effectiveness of review procedures

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The Commission has presented a report on the effectiveness of Directive 89/665/EEC and Directive 92/13 /EEC, as amended through Directive 2007/66/EC (known as the Remedies Directives) concerning review procedures.

The objective of the Remedies Directives is to ensure that economic operators have access to rapid and effective redress procedures throughout the Union if they believe that contracts have been awarded in breach of the EU's public procurement directives. They allow for legal actions to be taken both before the signature of a contract (pre-contractual remedies) and after its signature (post-contractual remedies).

Main conclusions: on the basis of the evaluation, the Commission concludes that the Remedies Directives, in particular the amendments introduced by Directive 2007/66/EC, **largely meet their objectives** both effectively and efficiently even if it has not been able to quantify their costs and benefits in concrete terms.

The remaining difficulties stem from national legislation and not in the remedies directives themselves. From a qualitative point of view, **the benefits of the Remedies Directives outweigh their costs**. They remain relevant and continue to present EU added value.

The Commission **does not see the need to amend the remedies directives** at this stage and therefore proposes to maintain them in their present form.

Weaknesses identified: despite the positive findings of the evaluation, some weaknesses were observed. The Commission thus recognises that:

- **certain provisions of the Remedies Directives are not clear.** For example, (i) the references to 'contract notices' in these directives do not reflect the fact that the new Directive 2014/24/EU authorises the use of a pre-information notice, instead of a contract notice, to call for competition in certain circumstances; (ii) clarification should be provided as regards the application of the Directives to changes in public procurement and concession contracts, the termination of such contracts and to the light procurement regime;
- **information on national remedies systems** has not been collected in a structured manner and has been rarely used for policy making purposes. This makes the assessment of the performance of the Directives more difficult;
- **specialised first instance administrative appeals bodies** are generally more effective than first instance judicial courts in terms of the length of proceedings and the standards of review.

Action to be taken: the Commission intends to ensure **greater convergence between the remedies systems** applied in the Member States by making use of the following additional measures:

- **increasing transparency in the performance of national recourse systems** by defining, together with the Member States, a limited number of objective indicators (number of complaints, number of substantiated complaints, costs, length of proceedings, etc.). These indicators would be published in the Single Market Scoreboard;
- **promoting cooperation between primary appeal bodies** by encouraging them to network to improve the exchange of information and good practices in regard to certain aspects of the

application of the Remedies Directives and by paying particular attention to the strengthening of first instance administrative appeals bodies;

- **disseminating guidance** on some important aspects of the Remedies Directives in order to allow a better understanding of some of their provisions. These include: (i) the interaction between the Remedies Directives and the new legislative package on public procurement, and (ii) the definition of the criteria to be applied to lift the automatic suspension of the conclusion of the contract as a result of the introduction of legal action;
- taking the necessary measures to bring national practices into line with EU rules if **breaches** of the Remedies Directives are found.