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DRAFT REPORT

on the public procurement strategy package
(2017/2278(INI))

Committee on the Internal Market and Consumer Protection

Rapporteur: Carlos Coelho

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the public procurement strategy package (2017/2278(INI))

The European Parliament,

- having regard to the Commission communication of 3 October 2017 on Making Public Procurement work in and for Europe (COM(2017)0572),
- having regard to the Commission communication of 3 October 2017 on Helping investment through a voluntary ex-ante assessment of the procurement aspects for large infrastructure projects (COM(2017)0573),
- having regard to Commission Recommendation (EU) 2017/1805 of 3 October 2017 on the professionalisation of public procurement – Building an architecture for the professionalisation of public procurement (C(2017)6654)¹,
- having regard to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC²,
- having regard to Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC³,
- having regard to Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts⁴,
- having regard to the Commission report of 17 May 2017 on the review of the practical application of the European Single Procurement Document (ESPD) (COM(2017)0242),
- having regard to Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement⁵,
- having regard to the Commission report of 11 October 2017 on the Assessment of the European Standard on electronic invoicing, according to Directive 2014/55/EU (COM(2017)0590),
- having regard to the European Economic and Social Committee opinion of 14 February 2018,
- having regard to Rule 52 of its Rules of Procedure,
- having regard to the report of the Committee on the Internal Market and Consumer

¹ OJ L 259, 7.10.2017, p. 28.

² OJ L 94, 28.3.2014, p. 65.

³ OJ L 94, 28.3.2014, p. 243.

⁴ OJ L 94, 28.3.2014, p. 1.

⁵ OJ L 133, 6.5.2014, p. 1.

Protection (A8-0000/2018),

- A. whereas over 250 000 public authorities in the Union spend around 14 % of GDP each year on the purchase of services, works and supplies;
- B. whereas public procurement involves the spending of a considerable amount of taxpayers' money, meaning that taxpayers expect this procurement to be carried out in the most efficient way, in terms of both costs and quality delivered;
- C. whereas public procurement may be a useful tool in the service of a stronger single market and for the growth of EU companies and jobs in the Union;
- D. whereas the Commission launched a targeted consultation on the draft Guidance on Public Procurement of Innovation on 3 October 2017, and a targeted consultation on the scope and structure of a Commission guide on socially responsible public procurement on 7 December 2017;
- E. whereas according to 2016 data, it appears that only four Member States rely on digital technologies for all major steps in public procurement;
- F. whereas according to the European Semester thematic fact sheet on public procurement of November 2017, the number of tender procedures with only one bid increased from 14 % to 29 % for the period 2006-2016;
- G. whereas the new rules introduced by the 2014 directives should contribute to the implementation of the Europe 2020 Strategy for a sustainable, more social, innovative and inclusive economy;
- H. whereas it is of crucial importance that suppliers trust that the Union's public procurement systems offer simple, digital procedures, full transparency and security of data;

Legislative framework and implementation

1. Welcomes, almost four years after the extensive revision of the Union public procurement legislative framework was concluded, the set of non-legislative measures proposed by the Commission and hopes that this will create impetus for better implementation;
2. Is disappointed by the pace at which many Member States have transposed the 2014 directives in the area of public procurement, and by the many delays, and regrets the fact that the Commission had to initiate the infringement procedure for a small number of Member States;
3. Is concerned about the next round of deadlines provided by the directives regarding electronic procurement and the transition of Member States to full e-procurement, including e-invoicing;
4. Calls on the Commission to finalise swiftly the Guidance on Public Procurement of Innovation and the Guide on socially responsible public procurement, in order to facilitate the implementation of the respective legal provisions in the Member States;

5. Asks the Commission to better organise the guides and other tools developed to help Member States with the implementation of the public procurement framework, in a more user-friendly way that offers a good overview to practitioners, while also paying attention to the languages available;
6. Welcomes the new public procurement guidance for practitioners of February 2018, designed to help national, regional and local public officials ensure efficient and transparent public procurement procedures for EU-funded projects;

Strategic and coordinated procurement

7. Points out that the current Union legislation, more than ever, allows for public procurement to be used as a strategic instrument to promote policy goals, and encourages the Member States to get the most that they can out of it;
8. Calls on the Member States to use public procurement strategically in order to promote a sustainable, circular and socially responsible economy, as well as innovation, SME growth and competition; underlines that this requires Member States to signal such policies at the highest level and support, to this end, procurers and practitioners in the public administration;
9. Welcomes the example of adopting National Public Procurement Strategies and encourages more Member States to follow this example as a means of modernising their public procurement systems;
10. Welcomes the fact that many Member States have made provisions for accepting the most economically advantageous tender (MEAT) and encourages its systematic application;
11. While acknowledging that in some cases the low price reflects innovative solutions and efficient management, is concerned about the excessive use of the lowest price as an award criterion in a number of Member States and therefore calls on the Commission and the Member States to analyse the reason behind this situation;
12. Stresses that it is important for contracting authorities to consider the full life-cycle of products in their purchasing decisions, and calls on the Commission to assist in the development of methodologies to implement the concept of ‘life-cycle costing’;
13. Notes that innovative, socio-economic and environmental considerations are legitimate award criteria in public procurement, but that contracting authorities can also pursue green, innovative or social goals through well-thought-out specifications and by allowing variant offers;
14. Acknowledges that a qualitative assessment of bids requires skilled procurers, and calls on the Commission to assist Member States with the dissemination of evaluation methodologies and practices;
15. Welcomes the efforts of several Member States to set up authorities that are responsible for coordinating procurement, and acknowledges that this contributes to conducting strategic and efficient procurement;

16. Calls for more Member States to use the advantages of central purchasing and aggregation of public purchasing, and notes that Central Purchasing Bodies can speed up dissemination of expertise, of best practices and of innovation;
17. Stresses that, especially with the aim of fostering innovation, it is important that contracting authorities engage with the market and make sufficient use of the pre-procurement phase as preparation for the next steps;
18. Considers that the new partnership procedure will contribute to fostering innovation, and encourages contracting authorities to cooperate with the market in order to develop innovative products, works or services which do not yet exist;
19. Welcomes the voluntary ex-ante assessment of procurement aspects for large infrastructure projects, as proposed by the Commission, and calls on the latter to focus on the operation of the helpdesk as a priority, while fully respecting confidentiality;

Digitalisation and sound management of the procurement procedures

20. Regrets the slow uptake of digital technologies in public procurement in the Union, and calls on the Member States to strive for a rapid digital transformation of the procedures and for the introduction of e-processes for all major stages, namely from notification, access to tenders and submission to evaluation, contract award, ordering, invoicing and payment;
21. Calls on the Commission and the Member States to do their utmost to put in place the eForms by the end of 2018 at the latest;
22. Agrees with the Commission that contract registers can be a cost-efficient tool for managing contracts, for improving transparency, integrity and data, and for better governance of public procurement;
23. Draws attention to the difficulties that may arise for bidders regarding requirements for certificates and signatures and encourages a light requirements regime in this respect, together with full application of the once-only principle in order to minimise the burden for bidders;
24. Emphasises that all Member States should be in a position to provide data on public procurement implementation, including data on tenders, procedures and contracts and statistical information, also in order to enable the Commission to assess the single market on procurement;

Single market and improved access to procurement

25. Notes with regret a decrease in the intensity of competition in public procurement in the Union in recent years, and urges the Member States recording a high percentage of notices with only one bidder to address the problem;
26. Urges the Member States to increase joint procurement procedures, including cross-border, as facilitated by the revised EU rules, and asks the Commission to provide technical support in this field;

27. Regrets that SMEs are still facing difficulties in accessing public procurement, and calls on the Commission to assess the effectiveness of the measures provided by the 2014 directives and to come forward with new solutions if necessary;
28. Calls on the Member States to support SMEs' participation in tenders, for example by mandatory division into lots;
29. Calls on the Commission to analyse in particular the impediments to cross-border public procurement resulting from language barriers, and to propose solutions;
30. Underlines the importance of ensuring interoperability in purchased goods and services and of avoiding vendor lock-in, and calls on the Commission to propose measures in this field;
31. Notes that reliable data on access to public procurement are necessary to verify the accountability of public authorities, and are a means of combating fraud and corruption;
32. Accepts the evaluation outcome of the Remedies Directive and the Commission's decision not to propose a legislative revision, but calls for continuation of the cooperation of national review bodies and for more guidance from the Commission on the directives;
33. Regrets that the Defence Procurement Directive has not yet delivered the desired results and urges the Commission and the Member States to intensify their efforts to better implement the currently applicable rules;
34. Calls for Union action to improve the access of EU suppliers to third-country public procurement markets, as the Union's public procurement market is one of the most open in the world;

Professionalisation

35. Welcomes the Commission's recommendations on professionalisation and calls on the Member States to develop national plans as a priority;
 36. Calls on the Commission to propose the means for financial support from Union funds to support relevant actions on professionalisation in the Member States;
 37. Underlines that both procurers and suppliers need to be adequately trained in order to work efficiently at all procurement stages, and that attention must be given to all levels of public administration as regards professionalisation;
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38. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

EXPLANATORY STATEMENT

In early 2014, the EU co-legislators concluded the revision of the Union's public procurement legislative framework. This extensive reform, a necessity in the process of European integration as identified by the 2011 Single Market Act, meant to serve directly the European 2020 Strategy and to considerably contribute to the Union's growth and competitiveness.

At that time the Parliament was reasonably satisfied with the outcome of the negotiations. It had fought firm – and succeeded – that the new Directives provide to the Member States the tools to modernise public buying, to digitally transform public procurement, and to move from simply regulating public procurement to implementing strategic public procurement.

However, the Directives are indeed offering options and opportunities for Member States; but, it is up to each country to make the choices. For the moment, about four years after the formal adoption of the Directives, there is no clear picture, nor full overview of how the Directives are transposed and implemented in the different Member States. This is unfortunately also due to the fact that considerable delays occurred as regards to transposition in many Member States – also to the extent that the Commission had to start infringement procedures for few of them.

The position of the Rapporteur

Your Rapporteur *welcomes the set of soft measures* proposed by the Commission on 3 October 2017 and its updated strategy on public procurement for the Union; this can stimulate better implementation of the public procurement rules in the Member States and accelerate national reforms as necessary.

Nevertheless, your Rapporteur wishes to note that the Parliament reserves its right to ask the European Commission anytime to propose legislative measures, should the need arise for the improvement of the Public Procurement Framework.

The 2014 Directives are an opportunity for the Member States to *modernize* their public purchasing rules. To this end, clear requirements of the Directives is the *digitalization* of procurement (e-procurement from the beginning to the end), as well as maximum *simplification*. This is an opportunity

- for more transparency;
- for more efficiency;
- for less bureaucracy;
- for a stronger single market.

In addition, the new Directives not only set the rules with which public authorities need to comply in order to justify how they spend taxpayers' money. More than any other time, the Directives provide enormous opportunities for the Member States to attain *strategic goals* and pursue policies through public spending. Public procurement is not a mere procedural tool to regulate the public purchase of goods, services or works. It can be a vehicle for the Member States, for example:

- to promote innovation;
- to promote green and circular economy;
- to pursue social goals such as for the benefit of disabled or older people;
- to support small and medium enterprises.

Your Rapporteur is concerned about the *pace* with which the Member States are modernising their public procurement framework and the intended *depth* of reforms. Therefore, he takes this opportunity to call on the Member States

- to move, where appropriate, from the lowest-price criterion to the most economically advantageous tenders and life-cycle costing; to encourage, from the highest state level, procurers and national practitioners to adopt this approach;
- to support SMEs participation in tenders, for example by the mandatory division into lots;
- to accelerate digitalisation of all stages in the procurement process;
- to put in place transparency tools, such as contract registers and systems serving the once-only-principle;
- to develop National Public Procurement Strategies, including comprehensive professionalization plans;
- to systematically collect and analyse public procurement data;
- to exploit better the advantages of central purchasing and of Central Purchasing Bodies;
- to use the pre-procurement phase and the new innovation partnership procedure for innovative buys;
- to take drastic measures to increase cross-border public procurement and cooperative procurement;

Your Rapporteur also calls on the Commission

- to identify possibilities available for Union funds to support relevant actions on professionalization in the Member States;
- to focus on the helpdesk for the voluntary ex-ante assessment of procurement aspects

for large infrastructure projects as a priority;

- to adopt swiftly the guidance on innovation and socially responsible public procurement;
- to organise all available guidance and other material in a user-friendly way that offers a good overview to practitioners;
- to assist Member States with the methodologies on life-cycle costing;
- to ensure eForms are timely put in place.

**ANNEX: LIST OF ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the draft report:

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Prof. Dr Christopher Bovis, University of Hull
Prof. Dr Jörg Becker, University of Münster
Mr Jaime Quesado, President of the Portuguese Government Shared Services Entity
Mr Joan Prummel, Advisor from the Dutch Organisation Rijkswaterstaat
Ms Baiba A. Rubesa, CEO of Rail Baltica
Mr Thomas Solbach, German Federal Ministry for Economic Affairs and Energy
Business Europe
UEAPME (European Association of Craft, Small and Medium-sized Enterprises)
Eurocities
OpenPEPPOL (Pan-European Public Procurement On-Line)
Architects' Council of Europe /Federal Chamber of German architects
RESAH (Hospital Procurement Network) / EHPPA association
IFPSM (International Federation of Purchase and Supply Chain Management)