



Modernisation of EU public procurement policy

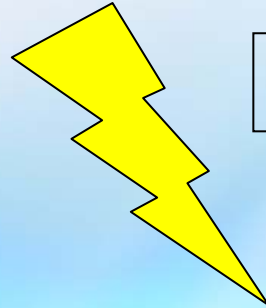
**Proposals of the Commission
Directive on public procurement
(replacing Directives 2004/18/EC and
2004/17/EC)**





Objectives for the reform

1. Simpler/ more flexible procedures



2. Strategic use

4. Sound procedures

3. Better access (SMEs, cross-border trade)

5. Governance / professionalization of procurement





1. Improving legal clarity





Impact Assessment (1)

- **Problem**
 - Unclear definitions of scope - legal uncertainty
- **Proposed actions - adjust scope & clearer definitions**
 - E.g.: Integration of B-services (except social) in standard regime: € 22 bn (of €420 bn)
- **Impacts**
 - Greater legal certainty, less litigation





Impact Assessment (2)

- **Discarded approach:** Radical changes to scope (e.g. raising thresholds)
 - Potentially less complexity (only where contracts not regulated by national law) BUT
 - Significantly less market access
 - Contracts worth €20 bn withdrawn if thresholds doubled
 - Higher prices for CAs resulting from less competition
 - GPA violation: litigation + compensation requests





1. Improving legal clarity

- Thresholds (Art. 4-6 - no change)
- Abandoning A/B-services distinction (but special, light regime for social, health and cultural services, Art. 74-76)
- Clarify public-public exemption (Art. 11)





2. Developing full potential of pp Best value for money





Impact Assessment (1)

- **Problem**
 - Insufficient leeway for strategic use
- **Proposed actions - moderate enabling approach**
 - allow considering production process + life-cycle costs
 - new instruments to foster innovation (« innovation partnership »)
- **Discarded - far-reaching coercive approach**
 - Obligations « what to buy » (e.g. quotas)
 - Mandatory life-cycle costing; abandon subject-matter link





Impact Assessment (2)

- **Impacts**

- Enabling approach (Preferred)

- Permits choices depending on individual circumstances / resources
 - To be complemented by obligations in sector specific legislation

- Coercive approach (Discarded)

- Strong impacts in achieving strategic goals, but:
 - Higher prices: e.g. 20% renewable energy = additional production costs €24-31 bn
 - Inappropriate due to different levels of maturity (countries/sectors)





2. Developing full potential of pp Best value for money

- Environment

- Life-cycle costing (Art. 67), concept + methodology
- Production process (in specifications and award)

- Innovation

- Innovation Partnership (Art. 29)
- Cross-border joint procurement (Art.38)





2. Developing full potential of pp Social procurement

- Allow social criteria related to production process (award, Art. 66)
- Extension of exception for sheltered workshops (Art. 17)
- Social services (Art. 74-76)
 - Quality-oriented, light regime





3. Simpler rules and more flexible procedures





Impact Assessment (A)

- Problem
 - Disproportionate and inflexible procedures
- Proposed actions
 - Enhance existing procedures
 - Wider use of e-procurement (see below)
 - Wider menu of procedural options; alleviate procedures
 - Greater freedom to use negotiated procedure with publication
 - New procedure “innovation partnership” (see above)





Impact Assessment (A)

- Impacts
 - Reduction of administrative burden
 - Improvement of overall cost-efficiency (better procurement outcomes)
 - Internal Market: Negotiated procedure attracts fewer tenders than open procedure, but higher proportion of cross-border awards





Impact Assessment (B)

- **Problem**
Administrative burden = barrier to SME / cross-border participation
- **Proposed action**
 - Acceptance of self-declarations as prima facie evidence
- **Impacts**
 - Self-declarations = savings in time / costs for CAs and firms
 - 80% reduction of administrative burden related to documentation requirements
 - Costs savings of around 169 million EUR





Impact Assessment (C)

- **Problem**
 - CAs' insufficient resources / capabilities; inefficiency (small contracts)
- **Proposed actions:** clearer + simpler rules for aggregation of demand
 - Use of CPBs
 - Repetitive purchasing techniques
 - Joint procurement
- **Impacts**
 - Lower costs for CAs
 - Facilitate innovation
 - Potential negative effects on businesses (SMEs) to be mitigated by combining aggregation with open competition (e.g. DPS)
 - Enhanced cross-border trade (increased contract values)
 - Increased professionalisation of procurement





3. Simpler rules and more flexible procedures

A. “Competitive procedure with negotiation” (Art. 24 and 27)

B. Reducing documentation requirements:

- In particular self-declarations (Art. 57)





3. Simpler rules and more flexible procedures

C. Aggregation of demand:

- Simplification of tools for repetitive purchasing (DPS = “open framework agreements”) (Art . 32)
- Clearer rules on central purchasing – safe haven concept (Art. 35)
- Joint procurement, including cross-border (Art.38)





4. Improving access for SMEs





Impact Assessment

- **Problem**
 - Missed opportunities for SMEs and cross-border procurement
- **Proposed actions - non-coercive measures**
 - *Reduce documentation requirements (see above)*
 - Turnover cap
 - Encourage splitting into lots
- **Discarded approach - prescriptive measures**
 - Mandatory lots, SME quotas, obligatory subcontracting
- **Impacts**
 - Prescriptive measures: less flexibility; increased administrative burden / complexity, hence, preference for non-coercive measures





4. Improving access for SMEs

- Division of contracts into lots “apply or explain” (Art. 44)
- Turnover cap (Art. 56.3)
- Possibility for Member States to foresee direct payments to subcontractors (Art. 71)
- European procurement passport (Art. 59)





5. Ensure sound procedures - avoid unfair advantages





Impact Assessment

- **Problem**
 - Lack of sufficiently clear rules to prevent corruption - might increase risks of corruption
- **Proposed actions**
 - Clearer rules to ensure integrity of procedures (e.g. conflicts of interest)
- **Impacts**
 - Clearer rules for sound procedures increase confidence in the system + more attractive environment for investments





5. Ensure sound procedures - avoid unfair advantages

- Safeguards against undue influence or advantages (Art. 21, 22 and 39)
- Stronger rules on abnormally low tenders (Art. 69)
- Transmission of concluded contracts to national oversight body (Art. 84.6)





6. Expanding e-procurement





Impact Assessment

- **Problem**
 - Lost opportunities due to insufficient uptake
- **Proposed actions**
 - Mandatory e-procurement
 - Needs investment in capacities – preferred option: phased/ targeted imposition
 - More widespread use of e-procurement tools
- **Impacts**
 - Full switch - expected savings: 50 – 75 bn EUR / year
 - improves proportionality / cost efficiency of procedures - lower prices (up to 20%), less operational costs
 - opens up cross-border opportunities





6. Expanding e-procurement

- Fully electronic communication = mandatory 2 years after transposition deadline (Art. 19.7)
- Improved e-tools: enhanced use of e-Certis, e-catalogues (Art. 58 and 34)
- Empowerment for COM to adopt interoperability standards (Art. 19.3)





* Governance *

Single Market Act for a highly competitive social market economy





Impact Assessment

- **Problem**

High error rate; divergent application of rules (lack of administrative capacity)

- **Proposed actions**

National authority for implementation, control, monitoring

- **Impacts**

- Could increase administrative burden but greater legal certainty, better procurement outcomes
- Costs of running the oversight body limited by possibility to designate existing structures

* Report of COM Internal Audit service (16.05.2011): better monitoring and enforcement needed





* Governance *

- National independent oversight body (Art. 84)
- « Knowledge centres » (Art. 87)
- Reinforce mutual assistance and information exchange amongst Member States, using the IMI system (Art. 88)





Utilities

(Directive replacing Directive 2004/17/EC)

- Why a separate Directive?
 - Different logic: addressees of Utilities Directive include private undertakings: their purchasing logic follows commercial practice → need for even greater flexibility
 - Divergences in the two texts → a "merged" Directive completely unreadable
 - Public consultation: broad consensus to keep separate Directive
- On substance:
 - Modernisation measures of "classic" Directive "transposed" into the future Utilities Directive insofar as compatible with the need for maximum flexibility
 - A few specific changes concerning Utilities





Specific changes to the Utilities

- Improved mechanism for exemption – ex-”Article 30” (Art. 27-28)
- Clarification of the notion of special and exclusive rights (Art. 4.2)
- Exclusion of exploration for oil and gas from the scope (this sector has consistently been found to be directly exposed to competition)





PP Directives

Negotiation in Council Working Party

Cluster 1 « Flexibilisation of procedures »

Cluster 2 « Strategic use »

Cluster 3 « Reducing documentation requirements »

Cluster 4 « E-procurement »

Cluster 5 « SME access »

Cluster 6 « Aggregation of demand »

Cluster 7 « Other procedural requirements »

Cluster 8 « Sound procedures »

Cluster 9 « Governance »

Cluster 10 « Scope/Basic provisions »

Cluster 11 « Specific Issues »

