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Committee on Legal Affairs

2006/2084(INI)

11.6.2007

OPINION

of the Committee on Legal Affairs

for the Committee on the Internal Market and Consumer Protection

on the specific problems in the Transposition and Implementation of Public Procurement Legislation and its relation to the Lisbon Agenda
(2006/2084(INI))

Draftsman: Alain Lipietz

PA_NonLeg

SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- A. whereas the Lisbon strategy proposes the establishment of an ‘active and dynamic welfare state’¹ in the pursuit of objectives ‘such as employment, regional development, environment...’² and that these objectives should be brought into line with the rules on competition and be made legally certain,
- B. whereas public procurement is becoming increasingly important for the economic growth of the EU and its internal market,
- C. whereas Directives 2004/18/EC and 2004/17/EC were adopted with the aim of simplifying the legal framework, creating legal certainty and adapting to changing technological and economic circumstances,
- D. whereas some of the innovative elements introduced by those Directives are not compulsory and whereas, consequently, their transposition may lead to different legislative outcomes in the Member States,
- E. whereas Directives 2004/18 and 2004/17 do not give a clear definition of ‘in-house’ contracts or other different forms of public-private partnership,
- F. whereas the case-law of the Court of Justice concerning in-house contracts confines itself to setting out in its judgments³ indications of cases in which exceptions to the public procurement rules are justified,
- G. whereas several Member States encourage their local authorities to set up institutionalised public-public partnerships with regard to which there is no established case-law,
- H. whereas the Court has proposed criteria allowing certain institutionalised public-private partnerships to be linked to ‘in-house’ contracts⁴,
- I. whereas the Court, in line with the Lisbon strategy, has determined that the first criterion in the awarding of public contracts must be the maximisation of benefit to the local population⁵,
- J. having regard to its resolution of 26 October 2006 on public-private partnerships and

¹ See paragraph 24

² See paragraph 17

³ Case C-107/98 *Teckal* [1999] ECR I-08121, para. 50; Case C-26/03 *Stadt Halle* [2005] ECR I-1, para. 49; Case C-458/03 *Parking Brixen* [2005] ECR I-8612, para. 49.

⁴ Majority of capital, subordination to territorial authority, activity pursued for the most part in that territory.

⁵ And not the minimisation of cost to the local authorities. This is implicit in the ruling of 17 September 2002 in Case C-513/99 *Concordia* [2002] ECR I-7213.

Community law on public procurement and concessions¹,

1. Calls on the Commission, in view of the widespread legal uncertainty as to the application of the in-house criteria, to develop criteria based on the case-law of the Court of Justice that would establish a stable frame of reference for decision-making by public authorities throughout the Member States;
2. Calls on the Commission to provide further details of the concept of ‘public authority’, so as to determine which forms of public-public partnership fall within the realm of subsidiarity and are not subject to the rules on public procurement;
3. Urges the Member States and their local authorities to follow the established case-law of the Court of Justice when setting up institutionalised public-public partnerships;
4. Calls on the Commission to adopt the criteria of the Court and the objectives established by the Lisbon summit² in its assessment of the awarding activity of the active and dynamic welfare state;
5. Calls on the Commission to enhance its role in assisting the Member States in the transposition of the Public Procurement Directives, in particular with regard to the non-compulsory innovative elements in line with the Court of Justice criteria;
6. Urges the Member States to increase their capacities to prevent illegal award practices by raising the level of award professionalism and the dissemination of best practices, in particular to local and regional authorities.

¹ *Texts Adopted, P6_TA(2006)0462.*

² In particular those relating to local employment and the environment.

PROCEDURE

Title	Specific problems in the Transposition and Implementation of Public Procurement Legislation and its relation to the Lisbon Agenda		
Procedure number	2006/2084(INI)		
Committee responsible	IMCO		
Opinion by Date announced in plenary	JURI 6.4.2006		
Enhanced cooperation – date announced in plenary			
Drafts(wo)man Date appointed	Alain Lipietz 30.5.2006		
Previous drafts(wo)man			
Discussed in committee	21.12.2006	11.4.2007	11.6.2007
Date adopted	11.6.2007		
Result of final vote	+: -: 0:	18 0 0	
Members present for the final vote	Carlo Casini, Cristian Dumitrescu, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Alain Lipietz, Antonio Masip Hidalgo, Manuel Medina Ortega, Aloyzas Sakalas, Diana Wallis, Rainer Wieland, Jaroslav Zvěřina, Tadeusz Zwiefka		
Substitute(s) present for the final vote	Janelly Fourtou, Luis de Grandes Pascual, Kurt Lechner, Michel Rocard, Gabriele Stauner, József Szájer		
Substitute(s) under Rule 178(2) present for the final vote			
Comments (available in one language only)	...		