



EUROPEAN PARLIAMENT

2009 - 2014

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*Committee on Regional Development*

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**2009/2175(INI)**

24.2.2010

# OPINION

of the Committee on Regional Development

for the Committee on the Internal Market and Consumer Protection

on new developments in public procurement  
(2009/2175(INI))

Rapporteur: Oldřich Vlasák

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## SUGGESTIONS

The Committee on Regional Development 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:

1. Points out that although local and regional authorities are among Europe's largest purchasers and therefore play an essential role in implementing public procurement rules, the complexity of the rules laid down in competition law and procurement law means that there is often a lack of expertise concerning the legal framework and its implementation, appropriate training and guidelines on procurement within sub-national authorities; calls on the Member States to set up training courses on public procurement rules (including specific aspects, such as social, environmental, diversity and equality criteria) and to encourage the use of ICTs to improve the understanding of those rules and the administrative capabilities of local and regional authorities; in this context, raises the possibility of establishing public procurement groupings at regional level based on cooperation between local and regional authorities, which would significantly improve the efficiency and effectiveness of public procurement through contacts and mutual exchanges of experience and information; furthermore, points out that efforts to uncover and reduce corruption at regional and local authority level must continue through the introduction of training, the provision of information and publicity;
2. Stresses that the Court of Auditors regularly indicates in its annual reports on the implementation of the EU budget, as well as in the latest Annual Report on the financial year 2008, that failure to comply with EU procurement rules is one of the two most common causes of errors and irregularities in the implementation of European projects co-financed by the Structural Funds and the Cohesion Fund; highlights, in this context, that irregularities are often caused by improper transposition of EU rules and by differences in the rules applied by Member States; calls on the Commission and the Member States to revise, in cooperation with regional and local authorities, the various sets of rules applicable to public procurement in order to unify those rules and simplify the whole legal framework for public procurement, in particular with a view to reducing the risk of errors and increasing efficiency in the use of Structural Funds;
3. Considers that it is not only costs and complexity which can be prohibitive, but also the time needed to complete the public procurement process, and the threat of legal action in the form of lengthy appeal procedures that are often obstructed by various actors, and hence welcomes the fact that the recovery plan makes it possible to apply accelerated versions of the procedures outlined in the public procurement directives to major public projects specifically in 2009 and 2010; calls on the Member States to make use of the procedure and assist local and regional authorities in implementing and using these procedures, in each case in compliance with the standard public procurement rules and regulations;
4. Calls on the Commission to examine the possibility of using, even beyond 2010, accelerated

versions of procedures in connection with the Structural Funds and an extension of the temporary increase in thresholds, with the specific aim of speeding up investment;

5. Deplores the fact that in some cases Structural Fund allocations for infrastructure projects undertaken in the context of a Public Private Partnership (PPP) and related contracts with private operators based on public procurement carried out at sub-national level have, as a result of very complex procurement procedures, led to a loss of European Union subsidies previously available to fund infrastructure development; believes that it is vital to remove obstacles to PPPs if the European Union wants to have any chance of making the necessary investments in infrastructure and quality services; calls on the Commission to ensure that public procurement and Structural Fund implementation rules set a coherent framework for PPPs in order to create legal certainty for all stakeholders and reduce the pressure on public budgets, in the context of the principle of co-financing and in the aftermath of the global economic crisis;
6. Recognises the right of local and regional authorities to decide democratically on the best means of delivering public services, including decisions to use companies they own or control without any private partner being involved; believes that even without compulsory tendering inter-communal or other forms of public-public cooperation for service delivery should be accepted as a legitimate way of delivering services and that sub-national actors should be able to assign tasks relating to public service provision to companies they own or control;;
7. Points out that the Commission's initiatives concerning public procurement need to be better coordinated in order to avoid jeopardising coherence with the European directives on public procurement and causing legal problems for operators; calls in this regard for better coordination within the Commission, including a single website with clear structures to promote legislative transparency in this field;
8. Underlines the need to encourage SMEs to participate in public procurement procedures carried out by local and regional authorities, in accordance with the EU's general objectives in support of SMEs; points out that increased involvement of SMEs can be ensured through the proper provision of information, consultancy and training courses and practical assistance ;
9. Endorses the concerns voiced by many local authorities in response to the interpretation of the rulings<sup>1</sup> of the Court of Justice in the field of urban development; firmly believes that the operationally and legally strict application of public procurement rules might hinder urban development; calls on the Commission to draw up, in close cooperation with Parliament, the Council and regional and local authorities, the corresponding public procurement rules with sufficient clarity to enable contracting authorities clearly to identify

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<sup>1</sup> Judgment of the European Court of Justice (First Chamber) of 18 January 2007 in Case C-220/05 Jean Auroux and Others v Commune de Roanne.

which public works contracts and concessions are subject to the procurement rules and thus distinguish between such contracts and concessions and urban development projects which are not subject to those rules, so that land agreements can be facilitated between the public and private sector without the unnecessary requirement of having to issue a call for tenders and without jeopardising the powers and right of local authorities to decide how they want to develop their territory; awaits with great interest the judgment of the Court of Justice in Case C-451/08; endorses the view of the Advocate-General of the Court of Justice delivered on 17 November 2009 in Case C-451/08: 'These broad and ambitious aims must be borne in mind when interpreting the Directive but it should not be assumed that, by appealing to the purpose of the measure, its scope can be extended indefinitely.' (paragraph 35); otherwise there is the risk 'that all town planning activities are subject to the Directive since, by definition, provisions on the possible execution of building works substantially alter the value of the land in question'.

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	22.2.2010
<b>Result of final vote</b>	+: 39 -: 1 0: 0
<b>Members present for the final vote</b>	François Alfonsi, Luís Paulo Alves, Charalampos Angourakis, Catherine Bearder, Jean-Paul Bisset, Sophie Briard Auconie, Zuzana Brzobohatá, Alain Cadec, Ricardo Cortés Lastra, Tamás Deutsch, Rosa Estaràs Ferragut, Seán Kelly, Evgeni Kirilov, Constanze Angela Krehl, Petru Constantin Luhan, Elżbieta Katarzyna Łukacijewska, Ramona Nicole Mănescu, Iosif Matula, Miroslav Mikolášik, Franz Obermayr, Jan Olbrycht, Wojciech Michał Olejniczak, Markus Pieper, Georgios Stavrakakis, Nuno Teixeira, Michael Theurer, Michail Tremopoulos, Viktor Uspaskich, Lambert van Nistelrooij, Oldřich Vlasák, Kerstin Westphal, Hermann Winkler, Joachim Zeller
<b>Substitute(s) present for the final vote</b>	Vasilica Viorica Dăncilă, Karin Kadenbach, Heide Rühle, Peter Simon, László Surján, Evžen Tošenovský, Sabine Verheyen