The Reform of EU Directives on Public Procurement: Towards more Flexibility

Proposals of the Commission for Directives on Public Procurement (replacing Directives 2004/18/EC and 2004/17/EC)
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Objectives of the Reform

1. Simpler / more flexible procedures
2. Strategic use
3. Better access (SMEs, cross-border trade)
4. Sound procedures
5. Governance / Professionalisation of procurement
International context

- Full compliance with WTO Government Procurement Agreement (GPA) and bilateral trade agreements (e.g., thresholds, procedures)
- Full use of flexibility under GPA (simplified procedures for sub-central authorities, shortening of deadlines, …)
Scope of proposals

- **Two proposals**, replacing Directive 2004/18/EC (public procurement) and Directive 2004/17/EC (procurement by utilities)

- **No changes** to the Directives on **Defence** procurement (2009/81/EC) nor on **Remedies** (89/665/EEC and 92/13/EEC, both as amended by 2007/66/EC)

- **Other parallel proposals**:
  - Proposal on concessions
  - Proposal for a Regulation on International Access
State of play

- Proposals adopted by the **Commission** 20 December 2011
- **Council**
  - General approach 10 December 2012

- **European Parliament**
  - Draft Report issued by Rapporteur in IMCO (Internal Market and Consumer Affairs)
  - IMCO report 18 December 2012
  - Negotiating mandate on 21 February 2013

- **Trilogue**: March 2013 until June 2013
Simplification
More flexible procedures

- Possibility of increased use of “competitive procedure with negotiation” (Art. 24 & 27)
- Simplification/added flexibility for competitive dialogue, framework agreements and DPS (dynamic purchasing systems)
- Simplified publication for sub-central contracting authorities: prior information notice replaces contract notice (Art. 24 (2)(b))
- General review of deadlines
Reducing documentation requirements

- Exhaustive list of requirements for selection criteria (Art. 56(1))
- Self-declarations (Art. 57)
- e-Certis (Art. 58)
Step up e-procurement

- Mandatory full electronic availability of tender documents (Art. 51)
- Fully electronic communication = mandatory 2 years after transposition deadline (Art. 19.7)
- Improved e-tools:
  - simplification of DPS (Art. 32)
  - e-catalogues (Art. 34)
  - e-signatures (Art. 19.5)
Strategic use of public procurement
Guiding principles

- No abandoning of link with the subject matter, but softening (production process, commercialisation, externalities – Art. 66, 67)
- Facilitate handling of societal requirements through labels (Art. 41)
  - Specific label may be requested if requirements linked to the subject-matter of the product
  - Equivalent labels must be accepted as well
  - Possibility for economic operators to provide alternative evidence where no access to the label in due time
Strategic use: Environment

- Production process related requirements
  - in technical specifications (Art. 40) and
  - as award criteria (Art. 66)

Example: use of energy-efficient machines for manufacturing

- Life-cycle costing optional, allowing to take into account externalities if verifiable and monetisable (Art. 67(1)(b)) Existing common EU methodology = mandatory life-cycle costing (Art. 67(3))
Strategic use: Social aspects

- **Production process related requirements**
  - as award criteria (Art. 66)
  - in contract performance conditions
  - requirements must concern
    - protection of health of staff or
    - social integration of disadvantaged persons (Rec. 41)
  - **Example:** recruitment of disadvantaged persons for the provision of the service
Specific regime for Social services

- **Simplified rules:**
  - Higher threshold – EUR 500 000 (Art. 4 (d))
  - Below threshold: typically no-cross-border interest (recital 11)
  - Above threshold: Member States free to decide on procedures, only requirement: ex-ante (+ ex-post) OJ publication (Art. 75) + non-discrimination (Art. 76 (1))

- **Member States must allow contracting authorities to take into account quality criteria (Art. 76 (2))**
Innovation partnership (Art. 29)

The contracting authority cooperates with a company selected in a regular competitive tender procedure for the **development and purchase** of an innovative product, work or service, which does not exist on the market.
Better access for SMEs and start-ups
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- **Division of contracts into lots** (Art. 44): “apply or explain” - EUR 500 000 / EUR 5 Million

- **Turnover cap** (Art. 56.3) (economic and financial standing): max. 3x the estimated contract value

- **Reduced documentation** requirements, self-certification, use of existing databases
Sound procedures
Sound procedures

- Minimum safeguards against conflicts of interest and other illicit behaviour (Art. 21, 22)
- Avoid unfair advantages because of prior association (Art. 39)
- Strengthen rules on abnormally low tenders (Art. 69)
- Clear rules for contract modifications during execution (Art. 72)
Contact

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http://ec.europa.eu/internal_market/publicprocurement/index_en.htm

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