



Opinion of the high level group

Subject: Priority area *Public Procurement*

I. Background

- (1) The High Level Group of Independent Stakeholders on Administrative Burdens (HLG) was set up inter alia to advise the Commission on suggestions for administrative burdens reduction measures coming from the Consortium and from stakeholders through the internet consultation. The Consortium has submitted a draft report concerning administrative cost and burden in the priority area of public procurement.
- (2) Based on this report and with input from the Commission, Mr. Telička and Mr. Linschoten, who were appointed as reporting members for the priority area public procurement, have prepared the present opinion. It constitutes the HLG's advice to the Commission on administrative burden reduction in this area.

II. General Comments

- (3) Europe wide tendering procedures are an essential part of the completion of the internal market. Common rules for procuring parties and providers of services and products aim at procuring the best value for taxpayers money.
- (4) On the EU-level, public procurement is governed by two directives.
 - a. Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.¹
 - b. Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.²
- (5) Procuring publically causes administrative costs for companies and tendering parties alike. However there are advantages of having such a system within the

¹ OJ L 134, 30.4.2004, p. 114 - 240

² OJ L 134, 30.4.2008. p.1 - 113

common market.

- (6) Public procurement is one of two priority areas in which all legislative acts have been scrutinised in the framework of the action programme. Obviously these calculations exclude the high administrative burdens that are incurred at national level. Moreover companies have to fulfil conditions specific to the tender, i.e. to the product or service in question. Answering these specific information obligations has not been part of the assessment by the Consortium because these specific information obligations are not imposed by the directives.
- (7) According to the Consortium procurement governed by the said directives accounts for approximately 20% of overall procurement. This means that 80% of the total amount of procurement falls below threshold and therefore can be attributed rules set at a national level. However, as several member states use the same/similar regulation below threshold as above threshold, the reduction potential is much higher than just the scope of the European directives.
- (8) It can be stated that the total of administrative costs for companies in the EU, incurred at national level, are about 4 times the size of the costs identified in the EU SCM Measurement. This means that any change in the way public procurement procedures are organized, would have a potential multiplier effect on national procurement procedures, therefore increasing the burden reduction significantly.
- (9) Directive 2004/18/EC foresees in its article 51 that Member States' authorities may ask for clarification in relation to the certificates that enterprises have to submit. Based on the findings of the Consortium it appears that although this EU legislative act only mentions the possibility for Member States to ask for clarification, mere mentioning this possibility has unintentionally paved the way for additional requirements at the national level.

III. Findings and recommendations of the Consortium

- (10) The draft report of the Consortium indicates that European public procurement rules cost European businesses around 188 Million EUR. It is stressed that in spite of this modest sum businesses often refer to public procurement as a "big irritant". This can be partly explained by the fact that firms perception is also based on compliance costs and other business costs and the frequent legal procedures.
- (11) Participating in tenders means that enterprises have to fulfil general conditions such as being solvent, having paid social security contributions etc. Furthermore companies have to fulfil conditions specific to the tender, i.e. to the product or service in question. As answering these specific information obligations has not been part of the assessment by the Consortium this would be an interesting subject for further research. According to the draft findings of the Consortium fulfilling the general information obligations "costs" 5 to 6 hours per company per tender. One aim of reduction therefore has to be to reduce the time per tender. This is possible in several ways that will be discussed in the following section of this opinion.
- (12) Encouraging the use of IT in businesses and government can diminish administrative costs. According to Eurostat, in 2007, only 57% of firms in the EU

used the Internet to ask forms and only 45% returned these forms electronically. The Consortium has found that if the share of enterprises using the Internet to communicate with public authorities increased by one point, administrative costs diminished by 1.5 points. Thus, for instance, if the share of companies using IT in their communication with public authorities were to increase by 20%, administrative costs could be reduced by 30%.

- (13) The consortium made the following recommendations: (a) Create a tenderers portal in which each tenderer has their own profile, uploading the information specific to them related to the selection and exclusion criteria; (b) Create a central database where all the documents and certificates required can be stored or create an interconnection between the different databases and official registers; (c) Set clear selection criteria: more precise specifications are needed from the contracting authority; (d) Gather all relevant information on the selection criteria in one section of the tender instead of referring to other sections for more details; (e) Set criteria in proportion to the value of the tender; (f) Only the winning bidder has to submit all the required documents; (g) Interconnection of databases and official registers.

IV. Possible angles for reduction measures; initiatives already started by the Commission

- (14) The Commission services, notably DG MARKT, had previously started work on several initiatives to increase governance and efficiency of European public procurement that relate to the suggestions being proposed by the Consortium.
- a. E-certificates: already in 2004 the EU e-Procurement Action Plan called for the electronic availability of required certificates and business certificates to cut red tape and allow for automated routine purchasing processes. A study was conducted in 2007-2008 to identify the different available scenarios to automate the transmission of business certificates and attestations and their associated costs and benefits. The findings of this study have been fed into the cross-border e-procurement pilot project 'PEPPOL', which is now working towards a common model for the so-called "virtual company dossier", i.e. a single online storage point or system based on an on-line 'safe' containing all necessary information/attestations for a specific company. Other options identified in the study such as direct data exchange between administrations would also merit further examination.
 - b. E-procurement initiatives: further to the adoption of the public procurement directives in 2004, which form the legal basis for introducing electronic means in public procurement procedures, the Commission adopted a Communication for the implementation of the e-Procurement Action Plan³. Since then, the Commission and Member States have been working together closely to implement e-procurement through co-

³ Link to action plan: http://ec.europa.eu/internal_market/publicprocurement/docs/eprocurement/actionplan/actionplan_en.pdf

Link to thematic website:

http://ec.europa.eu/internal_market/publicprocurement/e-procurement_en.htm

ordinated national action plans and common basic e-procurement tools. Thus the Commission has set up new tools to ease the life of businesses: it has modernised TED ('Tenders Electronic Daily'), a single point of access for all above-threshold public procurement opportunities across Europe; it has updated the CPV (Common Procurement Vocabulary), a multilingual classification allowing to bypass linguistic barriers in the search for contract notices in TED and, it has set up the pilot project PEPPOL to address cross-border procurement transactions in an electronic environment. It has also facilitated the life of contracting authorities by setting up an electronic notification system for their contract notices to replace paper forms. Despite the complexity of e-procurement, there is not always a clear result for a dominant number of cases when it comes to costs savings. Examples of possible actions might include facilitation of e-invoicing, merging of e-procurement databases at EU level, and reaching the i2010 goals of increasing the number of “virtual dossiers”.

V. Advice to the Commission

- (15) The HLG signals that the thresholds of the procurement directives have not been adjusted for inflation since the 1980s. Apart from the exchange rate, other relevant macro-economic elements should be taken into account. The HLG strongly advises the Commission to explore within the WTO context the possibility of a principle adjustment to the threshold. Furthermore the HLG strongly advises to use all the room already available in the EU framework.
- (16) The HLG strongly suggests generalising the possibility offered in the public procurement directives that, in open procedures, which account for 70% of public procurement, only the winner of a tender has to introduce all documents that are requested by the EU legislation. The HLG advises the Commission to promote the use of this possibility. This would shift the overall administrative burden from the current 5 bidders on average to the sole winner, hence reducing administration burden by approximately 80%. The HLG asks the Commission to consider alternatives as to how this approach could be practically reinforced within the public procurement framework, in particular through the opportunities offered by e-procurement.
- (17) The HLG further suggests introducing mechanisms that make it possible to ensure that any requested document only has to be submitted once during an agreed period, i.e. if a company submitted a certification relating to social security to one tendering authority; it does not have to do this anew during the validity of the certificate. Such mechanisms should be introduced for all tenders in one and the same Member State. In a later stage, the reciprocal recognition of documents between Member States should enable this principle to be applied across the EU.
- (18) The HLG strongly recommends to the Member States that the contracting authorities and entities do not ask for information that they already possess, information to which they themselves have access to or which was provided to them in earlier procedures. Also, contracting authorities should be encouraged to make procurement/tendering documents available for free.
- (19) The HLG strongly recommends to the Member States that the contracting authorities and entities use where possible appropriate and binding self-

declarations by tenderers.

- (20) The HLG strongly recommends that the Commission pursues its efforts to diffuse e-procurement and e-government, so that Member States can provide their certificates and business documents electronically as recommended in the e-procurement Action Plan.
- (21) The HLG encourages the Commission and the MS to streamline and simplify the procedures and to review the usefulness and necessity of the documents that are required.

Brussels, 10 December 2008