

ROADMAP

Title of the initiative: **Communication on public procurement with focus on how to underpin "Europe 2020" priorities: innovation, low carbon investment, social affairs, energy efficiency, etc**

Type of initiative (CWP/Catalogue/Comitology): CWP (Non-strategic)

Lead DG: DG MARKT/C3

Expected date of adoption of the initiative (month/year): September 2010

Date of modification:

Version No:

Initial IA screening & planning of further work

A. Context and problem definition

(i) What is the political context of the initiative? (ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

Public purchasers are increasingly called upon to use the tool of public procurement to foster the demand for innovative, environmentally friendly or socially responsible products or services. In this way, they can help to face important challenges confronting Europe, such as fighting climate change, promoting employment creation, strengthen the innovation capacity of the European industry.

Europe 2020 strategy refers to public procurement as an instrument to stimulate innovation and support the shift towards a resource efficient and low-carbon economy.

Numerous initiatives have been taken/proposed by other DGs (particularly ENV, ENTR, EMPL, INFSO, RTD, TRADE) to encourage the use of public procurement in support of specific policy objectives in the area of environmental protection, social inclusion, innovation and fair trade.

What are the main problems identified?

Public procurement can be used to support policy objectives in the field of environment, social inclusion and innovation. However, it is important to ensure that this is done in compliance with the current EU public procurement rules and in coherence with the objectives specific to Public Procurement policy, namely the opening up of public contracts to EU competition, which allows public authorities to get best value for money.

Our experience shows that public purchasers are not fully aware of what can be and what cannot be done under the current public procurement legal framework, in order to achieve policy objectives such as stimulating technological development, fighting climate change and reducing social exclusion.

On the one hand, national practices on the use of public procurement as an instrument to attain the said objectives are not always in line with the rules of Public Procurement directives; on the other hand, the possibilities offered by those directives are not always fully exploited.

Who is affected?

Public purchasers: they do not fully exploit the possibilities offered by Public Procurement Directives; they may establish tender conditions which are not in compliance with public procurement law.

Economic operators: they may be discriminated in tender procedures where contracting authorities take into account criteria not allowed by public procurement law.

(i) Is EU action justified on grounds of subsidiarity? (ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

The Communication aims at clarifying the EU legal framework, in order to ensure uniform application of public procurement law in all member States: such a clarification can only be provided at European level.

B. Objectives of EU initiative

What are the main policy objectives?

The Communication will provide comprehensive and coherent guidance across all policies on how to make the best use of public procurement to achieve policy objectives relating to today's major challenges. In particular, the Communication will explain to contracting authorities what they are required to do (legally binding provisions) and what they are allowed to do (possibilities offered by the EU PP Directives) under the current legal framework. They will therefore be able to:

- better understand the room for manoeuvre they have in deciding their procurement strategy;
- identify the considerations (environmental; social etc.) which can be relevant for their procurement decisions;
- combine them on the basis of their priorities without inadvertently restricting access to competition in procurement markets.

Do the objectives imply developing EU policy in new areas or in areas of strategic importance?

The Communication is not intended to define a new policy.

C. Options

(i) What are the policy options? (ii) What legislative or 'soft law' instruments could be considered?

(iii) Would any legislative initiatives go beyond routine up-date of existing legislation?

Currently, we provide guidance on a case-by-case basis, to stakeholders and inside the Commission. We may further develop this activity by devoting more resources to the participation in specific-sector initiatives, such as meetings with other services/stakeholders, conferences, workshops.

However, this approach does not prove sufficient to advise contracting authorities, which need a clear and comprehensive picture of what can be done under the current legal framework.

An interpretative communication is deemed to be the most appropriate solution.

Our view is shared by the European Parliament which is preparing an own initiative report partly on the same issue.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

Several EU policies rely on public procurement as a mean of achieving objectives in the field of environment, social inclusion and innovation: the Communication will provide comprehensive guidance across all policies concerned.

Explain how the options respect the proportionality principle

Not relevant

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

By providing guidance and clarity on the correct application of existing instruments for the green, social and innovative aspects of public procurement, we expect that cases of non compliance with public procurement rules will be reduced and that contracting authorities will better exploit the possibilities offered by those rules.

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

No impact

Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?

A comprehensive guidance on the possibilities to take into account different policy objectives in the procurement decisions should simplify the preparation of calls for tenders by public authorities.

E. Planning of further impact assessment work

When will the impact assessment work start?

Since the Communication is not intended to define a new policy but only to interpret existing legislation, no impact assessment is needed.

(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when? (v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

Some information on the use of public procurement in support of other policies has been received by other Commission services (namely in the field of environment). Additional information on national legislations dealing with this issue will be collected via the Advisory Committee on Public Contracts.

Which stakeholders & experts have been/will be consulted, how and at what stage?

In January 2010, the outline of the Communication has been discussed with Member State experts in the Advisory Committee on Public Contracts. The core part of the communication on the possibilities to steer public purchase through mandatory measures on "what to buy", was also discussed in the meeting of the Advisory Committee on Public Contracts, which took place on 17 March.