

ROADMAP	
TITLE OF THE INITIATIVE	Communication on e-procurement: "A strategy for e-procurement"
TYPE OF INITIATIVE	• CWP <input checked="" type="checkbox"/> Non-CWP • Implementing act/Delegated act
LEAD DG – RESPONSIBLE UNIT	DG MARKT - C4
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This indicative roadmap is provided for information purposes only and is subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.

A. Context, problem definition

- (i) What is the political context of the initiative?
- (ii) How does it relate to past and possible future initiatives, and to other EU policies?
- (iii) What ex-post analysis of the existing policy has been carried out and what results are relevant for this initiative?

Political context

Total EU public procurement (i.e. procurement for contracts valued both above and below the thresholds set by EU legislation) was estimated as some €2,400 billion in 2010 (around 20% of EU GDP). The amount above the thresholds set in EU public procurement legislation, and above which EU rules apply, was around €447 billion (3.7% of GDP). Spending this money efficiently and securing the best end purchase has always been important, but is even more so now, as Member States face fiscal problems due to the difficult economic climate. Whilst, the scope of the Public Procurement Directives relates to procurement above the EU thresholds, the initiative under discussion would encourage stakeholders to implement e-procurement whatever the value of the contract. This is in recognition of the fact that in many instances, it would be uneconomic / inefficient to develop different e-procurement platforms to deal with above or below threshold procurement.

Past initiatives

In 2004 the current public procurement directives (2004/17/EC and 2004/18/EC) were adopted, introducing i.a. the possibility to use electronic means of communication when conducting public procurement. In the same year, the Commission published an action plan for implementing the legal framework for electronic public procurement. In 2004, the Commission also adopted an Action Plan to promote the use of e-procurement.

These measures were further supported when in 2005, EU Ministers voiced set a target stating that "*by 2010 at least 50% of public procurement above the EU public procurement threshold will be carried out electronically*"¹. However, this target was not achieved and today only about 5-10% of procurement is carried out by electronic means. However, as described below, the ex-post analysis of the 2004 action plan for e-procurement found out that this target was not achieved, as no more than 5% of total public procurement was carried out electronically.

In April 2011, the SMA announced that proposals to modernise the EU's legislative framework for public procurement would be made by the end of that year. As part of the associated IA process, a range of measures relating to existing and new e-procurement provisions were considered. The proposals adopted on 20 December 2011 (COM (2011) 0895 final and COM (2011) 089 final) include a range of provisions, inter alia measures to achieve a full, but phased, transition towards full e-procurement by mid-2016. Other measures were proposed, designed to improve the access of suppliers to these markets, ensuring that any electronic systems operated by Member States are open and transparent and that the solutions developed improve the access to the Internal Market.

The phasing-in of e-Procurement forms part of the ambitious e-government agenda which can fundamentally transform the delivery and performance of public administration. The Commission's 2010 Digital Agenda for Europe foresaw the adoption of a Commission White Paper outlining steps that the Commission will take to establish an inter-connected e-Procurement infrastructure².

Existing ex-post analysis:

The ex-post evaluation of the 2004 action plan (SEC (2010) 1214 final), concluded that whilst much progress had been made and that the technology to implement e-procurement was now widely available, the actual level of up-take remained very low (no more than 5% of total public procurement). **The evaluation identified the following issues and challenges which should be addressed to foster the development of wide-spread, cross-border e-Procurement (in no particular order):**

- Provision of a supportive legal environment;

¹ The Manchester ministerial declaration of 2005

² A Digital Agenda for Europe COM(2010) 245 (page 32)

- More pragmatic approach, where appropriate, to technical issues;
- Greater support for administrative simplification and organisational change;
- Lack of standards in e-Procurement processes; and
- Improved access and wider inclusion.

Responses to a Green Paper on expanding the use of e-Procurement in the EU (published in October 2010) provided further valuable stakeholder feedback, helping to confirm/identify some of the reasons why take-up had lagged behind expectations and indicating some possible actions to address the matter. In particular, a majority of respondents agreed that the issues identified in the Green Paper were the most important and ranked them in the following order (most important to least):

- Overcoming inertia and fears on the part of contracting authorities and suppliers;
- The Lack of standards in e-Procurement processes;
- No means to facilitate mutual recognition of national electronic solutions;
- Onerous technical requirements, particularly for bidder authentication;
- Managing a multi-speed transition to e-Procurement.

Issues relating to the authentication/identification of bidders were identified as the main technical barrier.

The Green Paper also identified significant support for: the introduction of mandatory e-Procurement; wider sharing of solutions developed by the Commission and further Commission action to prevent the emergence of barriers to access (both in a cross border and SME context).

In 2011 the Commission also published a coordinated and comprehensive review of the existing EU Public Procurement framework (Evaluation Report: SEC (2011) 853 final), accompanied by a wider stakeholder consultation on issues affecting public procurement (Green paper on the modernisation of EU public procurement policy: Towards a more efficient European Procurement Market COM (2011) 15 final) . Together all these inputs informed the development of the proposals to reform EU public procurement legislation mentioned above, which contain key measures designed to facilitate the use of e-procurement,

The communication proposed in this Roadmap replaces the publication of a White Paper outlined in the Digital Agenda for Europe. In the context of the SMA, the Commission decided to advance the adoption of the proposals to modernise the EU's public procurement directives to the end of 2011. Moreover, given the extensive existing consultation, evaluation and analysis already carried out (see above), the Commission no longer considers it necessary to carry out further preparatory work by means of a White Paper as previously foreseen. Consequently, the Commission decided to merge the previously foreseen White Paper into the wider work addressing the modernisation of the EU public procurement Directives. The Communication foreseen in this Roadmap is the result of that decision.

What are the main problems which this initiative will address?

The Communication will not announce new actions, but rather present the economic case for electronic procurement (e-procurement) and explain the existing measures through which the Commission intends to support the transition towards full e-procurement in the EU as contained in the modernisation proposals.

The initiative will address 2 key challenges:

1). Slow pace of transition to e-procurement. As mentioned above, up-take of e-Procurement currently lags behind expectations and falls far short of the target set in the Manchester ministerial declaration. The evaluation and responses to the 2010 e-procurement Green Paper both identify a certain **inertia and reluctance on the part of contracting authorities and suppliers**. Some of the reluctance to switch to e-Procurement relates to concerns over the costs of introducing new systems and reorganising internal processes and also a low awareness of the advantages. Equally, some parties are deliberately adopting a "wait and see" approach because of the perceived risks of introducing new technologies; the impact on security and control and the business model that such technologies impose on supplier-contracting authorities relations. SMEs may also be concerned that they may be edged out of the market by trends towards aggregation and centralisation.

2). Risk of fragmented e-procurement landscape: **Currently**, different Member States or regions are moving at different speeds to embrace the possibilities offered by e-Procurement. Some Member States have already imposed the use of electronic procurement procedures for some or all purchases but now, under the modernisation proposals, all CAEs should be in a position to use electronic means of communication throughout the procurement process by mid-2016. The challenge for the single market is to ensure that partner country suppliers are not unnecessarily disadvantaged in competing on these systems and that they have the tools to participate in procedures organised on different systems. **This will require development of solutions to overcome inter-operability bottlenecks including work in the following area:**

- **standardisation of e-procurement processes:** for the foreseeable future, suppliers will be confronted with an e-procurement landscape consisting of different e-procurement platforms and arrangements. Each system may contain different technical features and functions, complicating the task of suppliers who seek to participate in multiple systems. This could increase learning costs for procurement suppliers and reduce participation in e-procurement systems.

- **facilitating mutual recognition of national electronic solutions** to critical procurement phases and tools (e.g. authentication of suppliers by the use of electronic signatures, national proof of eligibility documents). Solutions need to be found which reduce the burden on contracting authorities and suppliers wishing to operate in a wider European market.
- **Defining proportionate and commercially viable technical requirements, particularly for bidder authentication:** a wide range of requirements and solutions have been adopted across the EU to deal with issues relating to authentication and identification. Some of these solutions are technologically very simple e.g. the use of username/password combinations; others are more sophisticated, requiring specific types of electronic signatures. E-Procurement solutions need to be proportionate, mutually recognisable and widely available at reasonable cost. Finally, the lack of cross-border interoperability of electronic signatures poses another difficulty.

Who will be affected by it?

Contracting authorities and entities (CAEs); procurement agencies and supervisors; public administrations; economic operators both as suppliers of private sector e-Procurement solutions and tenderers in general ; citizens as tax payers and users of public services. There may also be an international dimension as the EU can play a role in furthering the adoption of e-Procurement on the global stage, ensuring solutions are compatible with European developments and promoting European solutions. The recently agreed Government Procurement Agreement text (part of the World Trade Organisation agreements) recognises the importance of using and encouraging the use of electronic means for procurement, and contracts awarded by electronic means are now explicitly within the scope of the Agreement.

- (i) Is EU action justified on grounds of subsidiarity?
- (ii) Why can Member States not achieve the objectives of the proposed action sufficiently by themselves? (Necessity Test)
- (iii) Can the EU achieve the objectives better? (Test of EU Value Added)

The legislative actions relating to e-procurement contained within the modernisation proposals have already been justified by the associated Impact Assessment (SEC (2011) 1585 final).

In brief, EU action is justified to help unlock the potential of e-Procurement and avoid the pitfalls of an uncoordinated and decentralised switchover to e-Procurement. In particular, EU legal and policy efforts have in the past and should continue to

- (1) Enable contracting authorities to undertake procurement electronically. EU legislation needs to be configured to allow e-Procurement systems and processes to be used (for above threshold procurement);
- (2) Ensure that e-Procurement is undertaken in a way that complies with the core principles and provisions of EU public procurement legislation (for above threshold procurement) and relevant Treaty principles (for below threshold procurement);
- (3) Encourage the development and use of convergent, secure but commercially viable solutions and disseminate examples of best-practice. This should speed up the switch to e-Procurement, avoid wasteful duplication and avoid repetition of mistakes.
- (4) Permit economic operators to participate in electronic procurement procedures across the single market.

However, the task of developing and implementing e-procurement capacity, re-organising local/national procurement administration and financing the investment in e-procurement will all be undertaken at regional or national level. EU role as target-setter and coordinator must take full account of the fact that, ultimately, the capacity building and resource investment decision-making powers lie at national level.

Furthermore, national/regional e-procurement capacity will serve both above and below-threshold procurement. The detailed provisions of EU procurement Directives apply only to above threshold procurement, although general Treaty principles apply to public procurement.

B. Objectives of the initiative

What are the main policy objectives?

The main policy objectives of this initiative are:

- 1) to build awareness of the measures proposed in the modernisation proposals and the challenging timetable they set (i.e. electronic notification and electronic access will become mandatory at the date of transposition as will the use of only electronic means of communication for all Central Purchasing Bodies (CPBS); other CAEs have until two years after transposition before they also will only be able to use electronic means of communication when conducting public procurement). This should result in increased use of e-procurement in

<p>the EU and allow Europeans to take advantage of the full potential of e-procurement;</p> <p>2) to ensure that e-procurement systems are open to suppliers across the Single Market;</p> <p>3) to promote other, non-legislative, actions identified for the Commission (and Member States), intended to support the adoption/transposition process and ultimately increase and expand the use of e-Procurement within the EU</p> <p>The Communication will present new data highlighting the economic case for switching to e-procurement and explain the legislative proposals and other supporting work currently planned at EU level in the area of e-procurement. The purpose of the Communication is to bring together all Commission actions, providing a single reference point for an e-procurement strategy.</p>
Do the objectives imply developing EU policy in new areas?
No

C. Options
<p>(i) What are the policy options being considered?</p> <p>(ii) What legislative or 'soft law' instruments could be considered?</p> <p>(iii) How do the options respect the proportionality principle?</p>
<p>This initiative is intended to build awareness of the existing actions being undertaken by the Commission. To that end, it should explain both the various legislative actions relating to e-procurement contained within the proposals adopted in December 2011 and a series of non-legislative actions intended to support the implementation of these proposals.</p> <p>A range of different policy options, including actions relating to e-procurement were considered within the context of the Impact Assessment for the modernisation of public procurement rules (see SEC (2011) 1585 final for more details of both the options considered and the expected impacts).</p> <p>In brief, the main actions considered in relation to e-procurement were designed to address problems identified in relation to:</p> <ul style="list-style-type: none"> • sub-optimal cost efficiency of procurement (since e-procurement can deliver significant economic and efficiency savings); • missed opportunities to society caused by CAE reluctance to switch from paper based systems, often resulting from uncertainty about what e-procurement means and fear that any errors they commit would result in legal proceedings being brought by firms. <p>Many of the options considered legislative change as the drivers for the issues identified stemmed from existing EU law. A range of soft law actions were also considered, generally to provide support and training. The main legislative actions considered relating to e-procurement included:</p> <ul style="list-style-type: none"> • Increasing the use of electronic communication tools (e-procurement); • Implementing legislation to ensure open/accessible e-procurement solutions; • Mandatory full use of electronic communication to be phased in by set deadline; • Mandatory transmission of notices in electronic form; • Mandatory electronic availability of tender documents; • Imposing fully electronic communication on Central Purchasing Bodies; • Mandatory acceptance of (electronic) self-declarations as prima-facie evidence for selection; • Introduction of a European Procurement passport (which could be provided electronically): a standard document, validated at MS level, which confirms that a bidder is compliant with certain, frequently requested criteria; • Obligation for MS to feed e-Certis (an electronic repository of certificates required for selection criteria).

D. Initial assessment of impacts

What are the benefits and costs of each of the policy options?

In general, the modernisation impact assessment found that e-procurement has the potential to bring significant efficiency gains to public procurement as it can:

- help improve the transparency of and access to procurement opportunities, especially for SMEs, thus stimulating cross-border competition, innovation and growth in the Single Market. It can also reduce error rates, for example, by avoiding the need to repeatedly encode paper-based information in IT systems at different phases of the procurement procedure;
- achieve significant cost reductions, both by lowering the price that the public sector pays to purchase goods, services and works; and by reducing transaction costs for the public sector and for economic operators (including by reducing the duration of procurement procedures). The resulting savings can either be harnessed to promote fiscal consolidation or be redirected towards growth enhancing initiatives. Existing e-procurement initiatives implemented in the EU have reported price reductions of up to 20% and reduced transaction costs (both in time and monetary terms). In addition, e-procurement can open up cross-border opportunities, reduce information barriers and streamline document exchange.
- Action to reduce technical fragmentation via the specification of clear standards and norms should reduce entry barriers for firms. At present there are many systems with different technical requirements and many businesses face high learning costs in relation to using and moving between these systems which would need to be addressed, possibly through the development of EU level standards and/or templates. These problems are not just limited to would-be cross border procurers; even within a single country, many different systems and interfaces may exist.
- The risk that e-procurement could exclude SMEs, because they have less access to this technology, does not appear to be borne out by experience. A recent study by DG ENTR shows that many SMEs are already "e-procurement savvy" and taking full advantage of the opportunities it provides. Some MS/countries (Portugal, Wales) that have made the transition have found that SMEs can increase their share of market for public contracts.

Estimates by Deutsche Bank research suggest that "a full switch to e-procurement may save between € 50 to 75 billion on public procurement in the EU per year. On top of that are increases in transparency and public accountability which are arguably the most interesting categories but also the hardest to quantify". Increasing the uptake of eprocurement could increase the visibility of how money is spent as it allows clear monitoring of spend and easy benchmarking. This could also enable MS to track "socially responsible" and "environmental friendly" spending and improve their planning.

Whilst there may be some initial costs in adapting to such change, in general the impact assessment expected that savings should outweigh the costs. It also recognised that mandatory imposition of e-procurement would best ensure the subsequent realisation of economic and efficiency gains, while a phased imposition of eprocurement appeared most appropriate.

The communication initiative proposed here would further demonstrate and promote these benefits, raising awareness of the actions necessary to fulfil the proposals and the benefits which they should generate.

Could any or all of the options have significant impacts on (i) simplification, (ii) administrative burden and (iii) on relations with other countries, (iv) implementation arrangements? And (v) could any be difficult to transpose for certain Member States?

As mentioned above, e-procurement solutions already implemented in various Member States have demonstrated the potential to simplify the current process and provide efficiency gains. Where available/appropriate, the Impact Assessment for the modernisation of public procurement rules (SEC (2011) 1585 final) provides more detail on these areas.

(i) Will an IA be carried out for this initiative and/or possible follow-up initiatives? (ii) When will the IA work start? (iii) When will you set up the IA Steering Group and how often will it meet? (iv) What DGs will be invited?

No Impact Assessment will be carried out for this initiative.

The Communication brings together a range of related actions which have already been announced, and explains the provisions proposed to modernise the EU's legislative framework for public procurement. As mentioned above, these legislative proposals have already been subject to an Impact Assessment (SEC (2011) 1585 final)). Hence, since this initiative introduces no new commitments on the part of the Commission, there is no need for an Impact Assessment.

(i) Is any of options likely to have impacts on the EU budget above €5m?
(ii) If so, will this IA serve also as an ex-ante evaluation, as required by the Financial regulation? If not, provide information about the timing of the ex-ante evaluation.
No

E. Evidence base, planning of further work and consultation

- (i) What information and data are already available? Will existing impact assessment and evaluation work be used?
- (ii) What further information needs to be gathered, how will this be done (e.g. internally or by an external contractor), and by when?
- (iii) What is the timing for the procurement process & the contract for any external contracts that you are planning (e.g. for analytical studies, information gathering, etc.)?
- (iv) Is any particular communication or information activity foreseen? If so, what, and by when?

A wide evidence base informed the preparation of the Impact Assessment for the modernisation of public procurement rules (SEC (2011) 1585 final). This included:

1. The evaluation of the (2004) Action Plan for electronic procurement (SEC(2010) 1214 final) and supporting study by Siemens-time.lex;
2. The replies to the October 2010 Green Paper on expanding the use of e-procurement in the EU (summary available at http://ec.europa.eu/internal_market/consultations/docs/2010/e-procurement/synthesis_en.pdf);
3. The review of the existing EU Public Procurement framework (Evaluation Report: SEC (2011) 853 final) and supporting studies;
4. Replies to the Green Paper on the modernisation of EU public procurement policy: Towards a more efficient European Procurement Market COM (2011) 15 final). For a summary of the responses received please go to http://ec.europa.eu/internal_market/consultations/docs/2011/public_procurement/synthesis_document_en.pdf;
5. Various technical studies produced for the 2004 Action Plan and other work under the IDABC/ISA programme;
6. Results/feedback from the Pan-European Public Procurement On-Line project (PEPPOL);
7. Other studies by partner DGs (e.g. DG ENTR study on SMES, DG INFSO e-Government benchmarking study);
8. Information provided by practitioners and Member States (e.g. via Member State committees and working groups including the ACPC and ePWG, conferences, e-Practice website etc.).

Several of the above studies involved different degrees of stakeholder consultation. The two Green Paper consultation exercises carried out (points 2 and 4) were also supported by well attended conferences in Brussels (on 26.11.2010 and 30.06.2011 respectively), where stakeholders had a further opportunity to express their views. The evaluations (and supporting studies) and the Green Paper findings were presented and discussed with Member State's representatives at meetings of the Advisory Committee for Public Contracts and the e-procurement working group. A special meeting of the ACPC was held on 6.07.11 to discuss the emerging findings and possible implications for the reform. A similar agenda was discussed with a wide range of Directorates General at an internal Commission meeting on 15.07.11.

Together all these inputs informed the development of the proposals to reform EU public procurement legislation and thus, served as foundation/background material for this initiative.

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

A broad range of consultations have already been carried out as described above. Moreover, the Commission will put in place a range of measures to ensure stakeholder and expert input at every stage of the transition towards full e-procurement. This includes existing groups such as the E-Procurement Working Group of the Advisory Committee on Public Contracts, the Commission's e-Tendering Expert Group and ad-hoc conferences and workshops that are planned for the coming months and years.