



EUROPEAN COMMISSION

Brussels, 24.10.2012
C(2012) 7247 final

Dear President,

The Commission would like to thank the Assembleia da República for its Opinion on the proposals for a directive on public procurement {COM(2011) 896 final} and for a directive on procurement by entities operating in the water, energy, transport and postal services sectors {COM(2011) 895 final} and apologises for the delay in replying.

The Commission has taken due note of the observations made by the Assembleia da República on simplification and reduction of complexity and costs. The Commission's aim is to strike the right balance between inter alia simplification and guaranteeing the fundamental principles of transparency, equal treatment and non-discrimination, while taking also into account the EU's international commitments (WTO General Procurement Agreement).

On the issue of the lighter regime proposed for social and associated services and the simplification measures provided for in favour of sub-central authorities, the Commission would like to underline that, according to the proposal, Member States would remain competent to lay down the specific implementing measures, such as the tendering procedures for social and associated services, while respecting the fundamental principles of EU law in this area.

The Commission believes that the inclusion of general and/or corporate social responsibility criteria in the contract award procedure would mean abandoning the fundamental principle of linking the award to criteria related to what is being procured. This principle ensures that the purchase itself remains central to the process for which taxpayers' money is used. This principle constitutes an important guarantee to ensure that contracting authorities obtain the best possible offer with the most efficient use of public funds; it also helps to avoid potential discriminations where some economic operators, for instance from a particular country, might be favoured to the detriment of others.

*Mrs. Maria da Assunção ESTEVES
Presidente da Assembleia
da República
Palácio de S. Bento
P – 1249-068 LISBOA*

The Commission would also like to stress that the measures proposed on substantial modifications of the contract codify the case-law of the EU Court of Justice in this field. Contract extensions, even though they are not specifically mentioned, are covered by these provisions and may constitute substantial modifications if the conditions specified are met.

Concerning the measures on governance, the Commission shares the objective of improving the implementation and enforcement of EU public procurement law. As far as the structures required to fulfil these tasks are concerned, the Commission will duly take the position of the Assembleia da República into account in the current negotiations with co-legislators.

I hope that these clarifications address the concerns expressed by the Assembleia da República and I look forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*