

## Opinion of the Finance Committee 2010/11:FiU19

### Opinion on the Green Paper on e-Procurement

---

#### Summary

In this Opinion the Finance Committee addresses the European Commission's Green Paper on expanding the use of e-Procurement in the EU (COM(2010) 571). The Green Paper examines the challenges that, according to the Commission, constitute the main barriers to a successful transition to e-Procurement and increased cross-border participation in procurement procedures. Some suggestions are also made in the Green Paper regarding the priorities for EU-level action.

The Committee welcomes the Commission's Green Paper on expanding the use of e-Procurement in the EU. The wider use of e-Procurement could lead to increased accessibility and transparency, more efficient administration and increased potential for integration of procurement markets in the EU.

The Committee has no objections to the description of the problem given by the Commission in the Green Paper as to what is preventing a successful transition to e-Procurement. As far as the five priorities for EU-level action are concerned, the Committee takes the view that, going forward, the Commission ought to focus on action promoting cross-border e-Procurement. The aim should be to avoid barriers that cannot be overcome by the market itself. In the Committee's view, an important part of promoting cross-border e-Procurement is work on standardisation.

The Committee would also stress that e-Procurement should be viewed as one part of the broader work on e-Administration. This means that the Commission should ensure that any action is coordinated with action taken with regard to e-Administration as a whole.

## Contents

Summary .....	1
The Committee's proposal for a Parliament decision .....	3
Overview of the matter .....	4
The matter and its handling .....	4
The Committee's examination .....	5
The Green Paper .....	5
The Government's explanatory memorandum on the Green Paper .....	8
Additional information .....	9
The Finance Committee's position .....	11
<i>Annex</i>	
List of proposals discussed .....	13

## The Committee's proposal for a Parliament decision

### **Expanding the use of e-Procurement in the EU**

Parliament presents the opinion for discussion.

Stockholm, 20 January 2011

For the Finance Committee

*Anna Kinberg Batra*

The following members have been involved in taking this decision: Anna Kinberg Batra (Moderate Party), Thomas Östros (Social Democratic Party), Elisabeth Svantesson (Moderate Party), Jennie Nilsson (Social Democratic Party), Göran Pettersson (Moderate Party), Jörgen Hellman (Social Democratic Party), Ann-Charlotte Hammar Johnsson (Moderate Party), Monica Green (Social Democratic Party), Carl B Hamilton (Liberal Party), Bo Bernhardsson (Social Democratic Party), Annie Johansson (Centre Party), Staffan Anger (Moderate Party), Anders Sellström (Christian Democrats), Johnny Skalin (Sweden Democrats), Ulla Andersson (Left Party), Sven-Erik Bucht (Social Democratic Party) and Jonas Eriksson (Green Party).

## Overview of the matter

### The matter and its handling

On 18 October 2010 the European Commission presented the Green Paper on expanding the use of e-Procurement in the EU (COM(2010) 571). The Chamber referred the Green Paper to the Finance Committee for examination.

In connection with the adoption in 2004 of the European procurement Directives (2004/18/EC and 2004/17/EC) the Commission presented an Action Plan for the implementation of the legal framework for electronic public procurement (COM(2004) 841 final). The Action Plan included proposals for action aimed at ensuring a well functioning Internal Market in electronic public procurement, at achieving greater efficiency in procurement and improving governance, and at working towards an international framework for electronic public procurement.

The Green Paper is based on an evaluation of the 2004 Action Plan which the Commission organised in 2009–10. As a follow-up to the Green Paper, the evaluation of the Action Plan was published in the form of a working document (SEC(2010) 1214).

The Government presented an explanatory memorandum on the Green Paper on 1 December 2010.

Opinions on the Green Paper should reach the Commission by 31 January 2011. The Commission services will analyse all responses and publish a synthesis of views in 2011.

## The Committee's examination

### The Green Paper

The Green Paper examines the challenges that, according to the Commission, constitute the main barriers to a successful transition to e-Procurement and increased cross-border participation in procurement procedures. Some suggestions are also made in the Green Paper regarding the priorities for EU-level action.

Overall take-up of e-Procurement, both within most countries and across the EU as a whole, remains low and is estimated to be less than 5% of total procurement by value in the first-mover Member States. One exception is Portugal, where the use of e-Procurement has been mandatory since 1 November 2009 for most public purchases. In the Green Paper the Commission presents some new ideas for promoting the migration to e-Procurement. According to the Commission, the advantages of the wider use of e-Procurement are increased accessibility and transparency, more efficient administration and increased potential for integration of procurement markets in the EU. Most of the required investment in e-Procurement must be undertaken at national or regional level, as this is where the needs and resources lie. However, in the Commission's view there is still an important role for EU initiatives to unlock the potential of e-Procurement and to avoid the pitfalls of an uncoordinated switch-over.

#### *Challenges*

In the Green Paper five challenges are identified which, according to the Commission, are preventing a successful transition to e-Procurement.

1. Contracting authorities are slow to make use of the possibilities for e-Procurement which exist. Stronger incentives are required for a speedier transition to e-Procurement. An obligation should possibly be imposed for e-Procurement to be used in certain circumstances.
2. A further challenge is the lack of standards in e-Procurement. More concerted EU level efforts to encourage alignment or standardisation in the crucial parts of the process are needed.
3. There are no means to facilitate mutual recognition of national electronic solutions to critical procurement phases and tools (e.g. authentication of suppliers by the use of electronic signatures).
4. The technical requirements are onerous, particularly for bidder authentication. For example, there is no cross-border interoperability of electronic signatures. In the Commission's view, e-Procurement solutions need to be proportionate, mutually recognisable and widely available at reasonable cost.
5. Different Member States and regions are moving at different speeds to embrace the possibilities offered by e-Procurement. One challenge for the single market is to ensure that partner country suppliers are not unnecessarily disadvantaged in competing on these systems.

The Commission poses the following questions concerning this field:

- Do the above challenges represent the most significant obstacles to the take-up of e-Procurement and cross-border participation in on-line procurement procedures? Please rank these challenges in order of importance.
- Are there other priority challenges not identified here? Please comment.

In the Green Paper the Commission describes five priorities for EU-level action with the aim of finding solutions for the above-mentioned challenges. These are i) incentives to accelerate take-up of e-Procurement, ii) to facilitate cross-border participation in e-Procurement, iii) building blocks for interoperable e-Procurement infrastructure, iv) more accessible, sustainable and innovative procurement, and v) benchmarking and monitoring. These priorities are further described below.

#### *Incentives to accelerate take-up of e-Procurement*

The first priority concerns incentives for accelerating the transition to e-Procurement.

A number of Member States have introduced obligations to conduct procurement procedures electronically — either generally (Portugal) or for designated purchases (France). For public purchases below the thresholds laid down in the EU Directives, Member States retain large discretion as regards the organisation of procedures. For above threshold procedures, the current EU public procurement Directives do not explicitly address the scenario where a Member State wishes to impose the use of e-Procurement as the relevant communication medium. According to the Commission, clarification on this point could provide national authorities with greater security when imposing the use of e-Procurement.

The current EU Directives already foresee a reduction in publication deadlines in the event of electronic notification of tenders and a reduction in deadlines for tender submission when unrestricted and full direct access to the relevant documents is provided by electronic means. In the Commission's view, there may be potential for introducing further incentives to encourage contracting authorities to migrate to e-Procurement. For example, there may be scope for transferring the responsibility for compliance with certain regulatory or procedural requirements from the contracting authority to an e-Procurement system which handles or manages all or part of the procurement procedure. This approach might require the definition of common requirements or principles for recognised e-Procurement systems to ensure that they offer the necessary guarantees.

The Commission poses the following questions concerning this field:

- Is there further scope for the introduction of regulatory incentives in EU legislation to encourage the use e-Procurement? Please describe the incentives that could be effective.
- Should EU legislation alleviate the obligations and responsibilities of contracting authorities when procurements are performed by e-Procurement systems? Would this make the use of e-Procurement systems more attractive?
- Should EU legislation permit the imposition of electronic procedures for some procurement covered by the EU Directives? What would be the advantages/disadvantages of such provisions? For which types of procurement covered by EU Directives could the mandatory use of e-procurement be successfully envisaged?
- Alternatively, should EU procurement legislation clarify the possibility for individual Member States to require the use of e-Procurement under certain circumstances? Under which conditions would this be useful or justified?

#### *Facilitate cross-border participation in e-Procurement*

According to the Commission, a second priority is to facilitate cross-border participation in e-Procurement.

Under this heading, EU-level action could contribute by first of all clarifying the access conditions that e-Procurement systems must satisfy. This means defining an agreed minimum set of characteristics which should be present in any e-Procurement system to ensure that it is widely accessible.

Secondly, EU-level action could contribute by facilitating mutual recognition of electronic identifiers, evidentiary documents and other conditions for economic operators to participate in on-line procurement procedures. The Commission has developed the e-CERTIS tool to assist contracting authorities in recognising valid documents from other Member States. It will continue to build on this tool, to develop practical solutions to help contracting authorities to recognise partner country attestations or certificates.

Thirdly, there may be a need for entry/participation requirements for economic operators to be simplified. The Commission's evaluation of the e-Procurement Action Plan reveals concerns that the preference for qualified electronic signatures may constitute an unnecessary entry barrier to e-Procurement — particularly for partner country suppliers in the absence to date of operational tools for the recognition of different electronic signatures.

The Commission poses the following questions concerning this field:

- Is EU intervention needed to avoid the emergence of unnecessary or disproportionate barriers to cross-border participation in on-line procurement procedures or systems? If clarification is needed, should it take legislative or non-legislative form?
- Do you consider that efforts to develop the EU legal and policy environment should focus on i) systems which support procurement procedures above the thresholds laid down in EU Directives, ii) larger systems dealing with a certain *de minimis* level of procurement?
- Is there a need to modify or update the current EU legislative framework on e-Procurement? If so, which provisions and for what reason?
- What authentication and identification solutions (including e-Signatures) are proportionate to the risks encountered in e-Procurement?
- What are the main technical, administrative or practical obstacles encountered by economic operators when seeking to register or participate in partner country e-Procurement procedures or systems (authentication, proof of eligibility, financial solvency, etc. — please specify)? Do these barriers constitute an insurmountable obstacle or can they be overcome at reasonable cost?

#### *Building blocks for interoperable e-Procurement infrastructure*

The third priority for action concerns the creation of building blocks for interoperable e-Procurement infrastructure. In the Commission's view, the standardisation of key processes and systems should be encouraged. The Commission is developing a suite of applications that will encompass all key phases in the procurement cycle and that are now being made available as free, open-source components which could be integrated into any e-Procurement system.

The Commission poses the following questions concerning this field:

- What EU level standards are needed as a priority to support e-Procurement?
- Should the Commission encourage or increase the provision of open-source solutions which can be integrated into existing or developing e-Procurement systems on a piecemeal basis?

- Should the Commission continue to make its own e-Procurement solutions (e.g. building on open-source e-Prior) available to the wider public?

#### *More accessible, sustainable and innovative procurement*

The fourth priority concerns making procurement more accessible, sustainable and innovative. It may be necessary to ensure that all e-Procurement systems are SME-friendly. E-Procurement can also decrease the consumption of environmental resources. Finally, the traceability and transparency of e-Procurement can make it easier to design, implement and monitor policies to direct expenditure towards innovative, sustainable and inclusive policy objectives.

The Commission poses the following question concerning this field:

- The Commission has already taken steps to encourage the creation of strategies to improve access to e-Procurement markets by SMEs. What further steps might be taken to improve the access of all interested parties, particularly SMEs, to e-Procurement systems?

#### *Benchmarking and monitoring*

The fifth and final priority concerns profiting from existing experience. The Commission proposes that better benchmarking and monitoring systems be introduced at both EU and national level to improve the possibilities of taking appropriate action and enabling best practice to be shared more effectively. The Commission will also continue to push for the development of an international framework for e-Procurement.

### **The Government's explanatory memorandum on the Green Paper**

The Government presented its explanatory memorandum on the Green Paper on 1 December (2010/11:FPM38). The Government takes a generally positive view of the contents of the Green Paper but is also of the opinion that it is in some respects too vague to permit the Member States to express more specific opinions on the Commission's future action in this field. Following the Commission's study of the preliminary results from the evaluation of the Action Plan that forms the basis for the Green Paper and following the meeting with the Commission's e-Procurement Working Group (e-PWG), on 22 June 2010 the Commission published the document 'Lessons to be drawn from the evaluation — Challenges for the development of interoperable, cross-border e-procurement'. Here the Commission requested the Member States' views on a number of issues relating to a future policy in the field. The Government submitted its opinions on the document on 8 July 2010 (Fi2010/514).

#### *Preliminary Swedish position*

The Government welcomes the Commission's initiative to draw up a Green Paper on expanding the use of e-Procurement in the EU. Increased use of e-Procurement is key to increasing accessibility and transparency in public procurement, improving the efficiency of administration and processes for both contracting authorities and suppliers and enabling cross-border procurement in the internal market. A transition to increased use of e-Procurement is also in line with the Government's ambitions and action in this field.

The proposal presented by the Commission covers the majority of the key problem areas that currently exist, and in the main the Government shares the Commission's view



concerning the priorities for action. The Commission has consciously chosen to keep the Green Paper at a somewhat higher, more general level with few specific proposals for action and a wide range of follow-up questions. This approach is of course positive, since the subject area is complex and characterised by a strongly decentralised structure where the main developments are driven at regional and national level, but it also makes it difficult for the Member States to put forward more specific opinions on the Commission's proposals. Among the proposals discussed, the Government welcomes in particular the fact that the Commission is considering a review of an earlier recommendation on the use of qualified signatures in e-Procurement and that it is emphasising the importance of increased action in the field of standardisation. At the same time, it is important for e-Procurement to be viewed as one part of the broader work on e-Administration and for the Commission to ensure that any measures taken are not developed in isolation but rather coordinated with the measures taken under the e-Administration agenda.

#### *Existing Swedish rules and the proposal's impact on them*

There are provisions on electronic public procurement in the Public Procurement Act [*Lagen om offentlig upphandling — 2007:1091*] (transposing Directive 2004/18/EC) and the Act on Procurement in the Fields of Water, Energy, Transport and Postal Services [*Lagen om upphandling inom områdena vatten, energi, transporter och posttjänster — 2007:1092*] (transposing Directive 2004/17/EC). As the Green Paper is rather general in nature and the proposals discussed for possibly amending legislation are not sufficiently precise, it is in the Government's view difficult at this stage to analyse the proposal's impact on the existing Swedish rules. If the Commission chooses to implement any of the measures requiring amendment of the procurement Directives, the Government believes that the provisions that are currently valid will in all likelihood also need to be amended. The Commission does not propose any legislation or amendments to existing legislation in the Green Paper.

#### *Budgetary consequences / impact assessment*

In the Government's view, the proposal presented by the Commission in the Green Paper is not sufficiently developed to form the basis for an assessment of its budgetary consequences. However, the Green Paper does give the impression that the Commission anticipates that continued action in the field will be of the same economic magnitude as previously and that no significant expenses over and above the existing financial allocation are to be expected.

No real impact assessment can be carried out to any great extent, since the Green Paper does not present any sufficiently concrete or final proposals.

#### *Subsidiarity and proportionality*

The Green Paper does not contain any sufficiently specific proposals for an assessment to be made on the basis of subsidiarity and proportionality. Insofar as potential amendments to existing legislation are discussed in the proposal, the Commission does not at this stage recommend any one solution over another.

### **Additional information**

#### *Projects aimed at developing cross-border trade and e-Procurement*

In October 2009 the Government decided that Sweden would participate in Pan-European Public Procurement Online (document number Fi2009/1897). The project aims to develop cross-border trade and simplify the procurement process by means of electronic procedures. It covers the entire procurement process from tender documents to payment. The goal is for all companies within the EU to be able to communicate via electronic means with contracting authorities and bodies throughout the procurement process. Sweden's participation is concentrated on creating an environment for cross-border electronic invoicing within the EU. The final report on the project is to be presented by 31 December 2011.

#### *Database with qualification requirements for suppliers (e-CERTIS)*

Sweden has been participating since 12 March 2010 in the European Commission's work to set up the e-CERTIS database. The database includes information on the supplier qualification requirements imposed for the most commonly used certificates in each Member State. The aim is to simplify trade between Member States and to enable contracting authorities and bodies and also suppliers to interpret and understand certificates from other Member States. The database entered operation in October 2010. According to information from the Government Offices, use is now into its stride in many countries, including Sweden.

#### *Organisation of the work on e-Procurement in Sweden*

The Legal, Financial and Administrative Services Agency [*Kammarkollegiet*] has been charged with pushing the development of e-Procurement and participating in the relevant standardisation work. The goal is to arrive at an uninterrupted electronic procurement process. The work aims to make use of the efficiency benefits that can be achieved for both buyers and suppliers when e-Procurement is used. In October 2010 the Agency presented a survey of the market for procurement systems and commercial databases of relevance to procurement.

The Swedish National Financial Management Authority [*Ekonomistyrningsverket* — hereinafter the ESV] is striving to increase the efficiency of Government procurement by, for example, introducing e-Procurement and e-Invoicing. The ESV has been mandated by the Government to lead and coordinate the introduction of electronic orders from framework agreements in the administration (document number Fi2008/1186). The target is for this to be completed by the end of 2013.

The Swedish Competition Authority [*Konkurrensverket*] is cooperating on e-Procurement and e-Tenders with the Legal, Financial and Administrative Services Agency, the ESV and a number of other competent authorities. The Competition Authority also cooperates, among others, with the Swedish Agency for Economic and Regional Growth [*Tillväxtverket*] in respect of information for small and medium-sized enterprises.

The State authorities cooperate in an organised manner with the local authorities and regions in the field of procurement. Cooperation has been most intense in drawing up a harmonised standard for the public sector with regard to e-Procurement and purchasing (SFTI). The Legal, Financial and Administrative Services Agency also takes part in this work on the basis of its task concerning the development of e-Procurement.

The Swedish Agency for Public Management [*Statskontoret*] was mandated to review the structure of State authorities in the field of procurement (document number Fi2010/2735). One of the aims of this review was to examine how procurement support operations arranged by the Government could be coordinated. The final report was presented on 1 November 2010, with the heading 'A new procurement authority' (2010:23). The Agency for Public Management proposes that a new State authority be set up to coordinate purchases and provide other procurement support. In the Agency's view, concentrating procurement support

in one authority would result in efficiency benefits and would realise the growth potential of public procurement.

### **The Finance Committee's position**

The Committee welcomes the Commission's Green Paper on expanding the use of e-Procurement in the EU. Considerable sums are involved in public procurement each year, and it is an important part of the national economy. The Green Paper, and the evaluation of the Action Plan for e-Procurement on which it is based, provide a good description of the current situation and will probably stimulate public debate on the issue.

The Committee shares the Commission's view that wider use of e-Procurement could lead to increased accessibility and transparency, more efficient administration and increased potential for integration of procurement markets in the EU.

The Committee has no objections to the description of the problem given by the Commission in the Green Paper as to what is preventing a successful transition to e-Procurement. As far as the five priorities for EU-level action are concerned, the Committee takes the view that, going forward, the Commission ought to focus on action promoting cross-border e-Procurement. The work should be directed at avoiding unnecessary or disproportionate barriers to cross-border participation in procedures or systems for e-Procurement. The Commission's evaluation of the Action Plan for e-Procurement demonstrates that, in today's market, economic operators wishing to participate in e-Procurement in other Member States face practical, technical and administrative barriers. For example, it is evident from the Commission's evaluation that qualified electronic signatures may constitute an unnecessary entry barrier to e-Procurement — particularly for partner country suppliers in the absence to date of operational tools for the recognition of different electronic signatures. The Committee welcomes the fact that the Commission is considering a review of an earlier recommendation on the use of qualified signatures in e-Procurement. In this context the Committee also wishes to emphasise that the EU should not unnecessarily intervene in the private market for e-Procurement systems and platforms, but rather that the goal should be to eliminate barriers that cannot be resolved by the market itself.

In the Committee's view, an important part of promoting cross-border e-Procurement is work on standardisation. The Committee is therefore very happy that the Commission believes that the standardisation of key processes and systems should be encouraged. It is important that the Commission continue to encourage and more actively support ongoing standardisation initiatives. It is also important to take account of accessibility to standards and to facilitate the participation of all interested parties. Well developed standards for key processes and systems could help competent authorities and companies take the plunge and make the required technical investments. Furthermore, the Committee notes that the Commission is developing a suite of applications that will encompass key phases in the procurement cycle and that are now being made available as free, open-source components which could be integrated into any e-Procurement system. In the Committee's view it is good that the Commission is clearly advocating open standards and open-source solutions. Open standards and open source lead to reduced costs and reduced dependence on individual suppliers.

The Committee believes it is reasonable for the Commission to consider whether further legal incentives can be introduced in EU legislation with the aim of encouraging the use of e-Procurement. However, in this context it is important to stress that the rules must take account of differing national conditions and the degree of e-maturity. Measures that are too strict or restrictive, for example with regard to specific technical solutions, risk causing new barriers.

According to the Commission one priority concerns making procurement more accessible, sustainable and innovative. This includes, for instance, ensuring that e-Procurement systems are SME-friendly. Using user-friendly systems to promote the opportunities SMEs have to participate in public procurement is, in the Committee's view, an important aspect. The Committee believes that procurement should in general be organised in a manner providing SMEs with better opportunities to submit bids. In the Committee's view it is up to the contracting authorities and bodies to safeguard these opportunities within the framework of the applicable rules. According to the Green Paper, the traceability and transparency of e-Procurement can make it easier to design, implement and monitor policies to direct expenditure towards innovative, sustainable and inclusive policy objectives. The Committee believes that public procurement has the potential to promote other policy goals, such as innovation and environmental and social considerations. For example, the demand from public operators could lead to such great demand for environmentally friendly and innovative products that production become profitable.

On the basis of the calculations presented in the Green Paper, the Committee notes that e-Procurement still constitutes only a very small proportion of all public procurement in the EU. Increasing this would in all likelihood result in significant savings. In the Green Paper the Commission gives examples of the savings made in some Member States that have migrated to e-Procurement. As far as Sweden is concerned, estimates are available from, for example, the ESV and the Agency for Economic and Regional Growth demonstrating the potential for large-scale savings for contracting authorities and bodies and for industry which would result from a transition to e-Procurement.

Finally, the Committee wishes to stress that e-Procurement should be viewed as one part of the broader work on e-Administration. This means that the Commission should ensure that any action is coordinated with action taken with regard to e-Administration as a whole. Work on e-Administration should aim to bring about lower costs and the greatest possible benefit for companies and citizens, the administration and society as a whole. The Swedish administration has a long tradition of openness and cooperation with wider society. During its EU Presidency, Sweden pushed the view that e-Administration should be used as a tool for strengthening in different ways the development potential of citizens, companies and organisations. This attitude was manifested in the ministerial declaration on e-Administration adopted during Sweden's Presidency. One key area in the declaration is to open up public administration so that public information and public services can be re-used by other parties, to improve the transparency of the way cases are processed and to identify new and effective ways of involving citizens and companies in policy-making processes. By as far as possible considering public information and e-services as common resources that may be used by other parties, the administration will be able to contribute to society's development potential and innovation capacity.

ANNEX

List of proposals discussed

European Commission's Green Paper on expanding the use of e-Procurement in the EU (COM(2010) 571).