



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels,
D(2011)

Opinion

Title

DG MARKT - Impact Assessment on a proposal for a legislative initiative on the review of the EU public procurement directives

(draft version of 3 August 2011)

(A) Context

Dating back to 1971, EU legislation on public procurement was comprehensively reformed in 2004 with the approval of Directives 2004/17/EC (the "Utilities Directive") and 2004/18/EC (the "Classical Directive"). The report considers the opportunity of revising these directives following their evaluation in 2011. The analysis also draws upon the 2010 evaluation of the 2004 action plan for e-procurement and the stakeholder responses to the Green Papers on modernising EU public procurement policy and on expanding e-procurement. Separate impact assessments cover parallel initiatives regarding concessions and third-country access to EU procurement markets.

(B) Overall assessment

To effectively support policy choices, the report needs to be significantly improved in several important respects. The presentation of the problems should identify in greater detail the specific issues to be addressed and provide a better sense of their relative importance and urgency. The content of the options under consideration should also be significantly clarified and the analysis of the impacts of the most relevant measures considerably strengthened, especially in the area of strategic procurement. Finally, the report should provide a better substantiated and more definitive comparison of the options.

Given the nature of these recommendations, the Board asks DG MARKT to submit a revised version of the report, on which it will issue a new opinion.

(C) Main recommendations for improvements

(1) Improve the presentation of the problems. While the report provides a clear classification of the main problems and their underlying drivers, it should identify in greater detail the specific issues in the legislative framework which need to be addressed and provide a better sense of their relative importance and urgency. In order to do so, the report should rely more explicitly on the results of stakeholder consultations and provide concrete examples of the identified problems. When analysing the relevance and impact of different governance arrangements among Member States, the report should distinguish more carefully between the problems caused by differences among governance arrangements per se and those due to the limited effectiveness of specific governance models or of national public administrations. This would allow a better appreciation of which underlying drivers could be tackled at the EU level. Finally, the very low share of direct cross-border public procurement should be put into context, comparing it with the equivalent private sector figure and taking into account the influence of "natural" market barriers and public sector specificities.

(2) Substantially clarify the presentation of the options. The report should more clearly describe the content of the various options, justify the selection of the measures under consideration and clarify with concrete examples how they would target the key problem drivers. The usefulness of grouping individual measures as "revolutionary" or "evolutionary" should be reconsidered and, in any case, the classification of individual measures within such groupings should be better justified.

(3) Improve the analysis of impacts and the comparison of options. The analysis of impacts is currently exceedingly general and should be strengthened in several respects. Key measures for each problem areas should be identified on the basis of transparent criteria. These measures' impacts should then be analysed in greater detail, including through a more extensive discussion of the potential trade-offs among various objectives and of the environmental and social impacts. In addition, the report should analyse impacts in terms of simplification and administrative burden reduction with greater precision. On the basis of this strengthened analysis of impacts, the report should provide a more extensive and better substantiated comparison of the options in order to effectively support decision-making.

(4) Strengthens the analysis of strategic procurement issues. All of the above recommendations apply with special relevance to the area of strategic procurement where there is a greater scope for policy change relative to the established framework and where there are potential risks for the single market and for the simplification and transparency of the legal framework. Drawing upon the existing experience with legislation and other policy tools at both Member States and EU level, the report should more clearly identify which measures could best integrate strategic procurement possibilities within the existing framework of policy measures and objectives.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation.

The main text of the report should discuss more extensively stakeholders' views, especially when these are different from the proposed approach. A summary providing the general results of the main consultations carried out over the last two years should be annexed.

(E) IAB scrutiny process

Reference number	2011/MARKT/017
External expertise used	No
Date of Board Meeting	7 September 2011