



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

(resubmitted draft version of 16 September 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 for 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

The report has been improved along the lines of the recommendations issued by the Board in its first opinion but some aspects should still be strengthened. The problem definition should include a more extensive discussion of the low share of public procurement that directly takes place cross-border. In addition, the exact content of options should be further clarified by precisely indicating the measures included in each option (notably the preferred one) and by systematically explaining headline measures. The report should also better analyse some of the specific impacts, particularly in the case of headline measures. Finally, the choice of the preferred policy package should rest on stronger supporting evidence and on an explicit comparison with alternative policy packages.

(C) Main recommendations for improvements

(1) Further improve the presentation of the problems. The revised report more clearly describes the main problems and their underlying drivers but should give a better idea of their relative importance. In this context, a more extensive discussion of the very limited amount of direct cross-border public procurement should be developed.

(2) Further clarify the content of the options. The revised report provides a much clearer description of the options, their headline measures and their links with identified problems. However, the main text should systematically describe the content of the headline measures (e.g the European procurement passport) and the specific problem they are addressing (e.g those underlying the proposal for a higher threshold for social services). It should also clarify whether the legal options under consideration contain all of the measures listed under the corresponding label in annex 5 or just a sub-set. In the latter case, the report should explain which criteria would drive the final choice of measures for the preferred policy option. Finally, § 4.2.4 suggests that legal options may differ in terms of the problems targeted by their headline measures. If so, the comparison of options should explicitly take this into account against the background of the clearer prioritization of problems suggested above.

(3) Better analyze some specific impacts. The revised report includes a strengthened analysis of impacts, including with regard to strategic procurement issues. It should, however, systematically analyze the specific impacts of the identified headline measures, including on admin burden. The discussion of the potential trade-offs among various objectives and of the environmental and social impacts should also be further improved.

(4) Compare alternative policy packages. While the revised report explicitly identifies the preferred policy options, supporting effective decision making would also require a more comprehensive justification of the choice made on the basis of stronger supporting evidence for choices within each problem area (particularly in the case of strategic procurement) and of a comparison of the preferred package of options with relevant alternative packages. The actual measures included in each package should be clearly defined.

(D) Procedure and presentation.

The presentation of stakeholders' views has been integrated throughout the report. A summary report of the main views should nevertheless be included as an additional annex. A reference to the content and use of the recently issued Commission guide on socially responsible public procurement should be integrated earlier in the text (notably footnotes 27/28). Following the revisions carried out as a result of the first set of Board recommendations, the whole text should be checked to ensure full drafting coherence. Acronyms used to describe options should be explained when first used. The IA should include a section explaining how the Board's recommendations have led to changes compared to the earlier draft.

(E) IAB scrutiny process

Reference number	2011/MARKT/017
External expertise used	No
Date of Board Meeting	Written procedure The present opinion concerns a resubmitted draft IA report. The first opinion was issued on 9 September 2011