



EUROPEAN COMMISSION  
IMPACT ASSESSMENT BOARD

21 MARS 2011

Brussels,  
D(2011)

## Opinion

Title **DG MARKT - Impact Assessment on a Legislative initiative on concessions**

**(resubmitted draft version of 4 March 2011)**

### **(A) Context**

In the absence of specific secondary EU legislation, awarding of service concessions and of work concessions in the energy sector must currently respect the four Treaty-based principles of equal treatment, non-discrimination, transparency and proportionality. It may also be subject to national legislation of varying scope and content.

Aiming to foster the use of public-private partnerships, facilitate the efficient use of public resources in the current economic situation and strengthen the Single Market, the Commission is considering whether to extend parts of the EU secondary legislation on public procurement (the "Classic Directive" 2004/18/EC and the "Utilities Directive" 2004/17/EC) to these types of concessions. A revision of these two directives is foreseen for 2012.

### **(B) Overall assessment**

**While the report has been improved along the lines of the recommendations issued by the Board in the first opinion, various aspects should be further strengthened. The report should provide further evidence that the identified legal shortcomings are the source of material problems for the Single Market. It should also better justify the timing of the initiative given the forthcoming review of the existing secondary legislation on public procurement. Finally, it should strengthen the impact analysis and the comparison of options, better explaining why no single preferred option is selected.**

### **(C) Main recommendations for improvements**

**(1) Provide further evidence of the problems and of the relevance of the identified drivers.** The revised report presents some additional evidence of the problems and stresses the relevance of the issues for public spending efficiency. Nevertheless, it should provide more supporting evidence or examples of: problems affecting specific service concessions cases, foregone use of concessions (p.15), and distortions in the Single Market (p.21). In so doing, the report should better illustrate the relevance of the targeted

problem drivers.

**(2) Better justify the timing of the initiative.** While the revised report better explains the scope of the initiative and the choice of options, it should discuss in greater detail how the initiative would relate to the envisaged 2012 revision of the "public procurement directives" and what the value added of two separate initiatives in succession would be.

**(3) Further strengthen the impact analysis and the comparison of options.** The revised report has improved the analysis of impacts and the comparison of options. It should, however, make further efforts to assess the relative size of impacts (§ 9.4.1). It should also evaluate options on the basis of their effectiveness, efficiency and coherence. In so doing, the report should explain why two preferred options are identified (given that the existing analysis clearly identifies the "mixed rules" option as the most effective).

**(D) Procedure and presentation.**

Presentational recommendations have been largely taken on board.

**(E) IAB scrutiny process**

Reference number	2010/MARKT/043
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 28 January 2011