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Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

SINGLE MARKET FOR PUBLIC ADMINISTRATIONS

MINUTES

EXPP/2016/03EN

Meeting of the Commission Government Experts Group on Public Procurement

6th of June 2016

MINUTES OF THE MEETING
OF
THE COMMISSION GOVERNMENT EXPERTS GROUP ON PUBLIC PROCUREMENT
OF
6TH OF JUNE 2016

TRANSPOSITION OF THE PUBLIC PROCUREMENT PACKAGE (11)

The meeting is chaired by Alvydas STANCIKAS, Head of Unit GROW G3 "Procurement legislation and enforcement". In addition are also present for the Commission services (hereafter 'COM services'): Claudio ROMANINI (GROW/G3); for point 5 of the agenda: Nicolas GROSSE (GROW/G2) and Marianne GUMAELIUS (TRADE); for point 6 of the agenda: Aleksandra KOZLOWSKA (GROW/C2); for point 7 of the agenda: Antonella CORRERA (GROW/H1); for point 8 of the agenda: Pierre SEAILLES (GROW/G1); for point 9 of the agenda: Nikita STAMPA Head of Unit GROW/G4 and for point 11 of the agenda: Jachym HERCHER (GROW/G4).

1. Adoption of the agenda of the EXPP meeting:

The agenda is adopted by the Committee.

2. Adoption of the minutes of EXPP meeting of 8th of March 2016 (EXPP/2016/01EN)

The minutes are adopted without modifications.

3. State of play of the transposition of the three Directives: update by Member States (tour de table)

The Chairman informed MS that COM sent Letters of Formal Notices to those Member States (MS) who as of 25 May had not notified full transposition of one or more of the new Directives. COM is waiting for answers within 2 months from the MS.

COM services remind that all adopted national transposition measures have to be notified by your authorities in the dedicated National Implementing Measures database of the Commission.

COM services thank all members for the good cooperation and active participation.

The results of this sixth tour de table (5/6 February 2015, 1 July 2015, 7 September 2015, 27 October 2015 and 6 June 2016) are integrated in the attached table (Annex 1).

The Chairman takes note of the delay in the transposition that is announced by several Member States. He stresses the need for all to do their best on this file due to its political importance. He also insists on the importance of concordance tables.

Some suggestions were made as to topics that might be interesting to look at in the coming months, either in meetings or otherwise through guidance etc.: UK, AT: exchanges on best practices in relation to innovation partnerships and the applicability of remedies to those procedures would be useful. ES, AT both signalled aspects of e-procurement as also being of interest: eESPD and electronic signatures thereof, use of eprocurement for below-threshold procurement (practice in general and in relation to e-publication). Finally, AT also suggested that an exchange of views and practices on the application of the "light regime" to medical services would be of interest. COM took note of these suggestions and pointed out that some might be more appropriate for discussions in the framework of the dedicated expert group on eprocurement (EXEP). The relationship between the EXPP and the EXEP might need to be evaluated again.

The Chairman highlights that COM started looking into transposition measures.

4. Transposition of the Public Procurement Package: questionnaires on the options – state of play

COM services thank the Member States that have replied already. 10 MS sent contributions since the last time. COM services invite those who have not yet done so to reply. COM services are aware that the replies are based on draft legislation.

COM services then present the general trends as they result from the replies received so far (19 replies for Directive 2014/23/EU, 20 replies for Directive 2014/24/EU and 20 replies for Directive 2014/25/EU). The main trends are integrated in the attached table (Annex 2).

In case of change in the replies already transmitted, EXPP members are invited to send updated versions of the questionnaires in track changes (due to the compilation of the replies).

5. International Procurement Instrument – IPI (GROW G2)

Presentation by COM services, Mr Nicolas GROSSE (GROW/G2) and Ms Marianne GUMAELIUS (TRADE) about the International Procurement Instrument, based on the annexed Powerpoint presentation (Annex 3).

COM services presented the revised International Procurement Instrument (IPI) proposal. This proposal is aiming at improving market access of EU economic operator in third countries procurement markets by providing leverage for public procurement negotiations with third countries where the EU companies face discriminatory practices. Some Member States expressed their concerns on the efficiency and the implementation of the instrument mainly AT, ES and UK. COM

services invited Member States to provide their comments in writing. Discussions on the revised instrument will continue in the Council and in the Parliament.

6. SustSteel Sustainability Mark for Steel Construction Products (GROW C2)

Presentation by COM services, Ms Aleksandra KOZLOWSKA (GROW/C2) about SustSteel Sustainability Mark for Steel Construction Products, based on the annexed Powerpoint presentation ([Annex 4](#)). On a question from AT, COM services clarified that a closer analysis would be needed to ascertain whether the SustSteel label would meet the conditions set out in Article 43(1) of Directive 2014/24/EU (which would make it possible to define technical specifications simply by reference to the label).

7. Late payment Directive: information by COM services (GROW H1)

Presentation by COM services, Ms Antonella CORRERA (GROW/H1) about the Late payment Directive, based on the annexed Powerpoint presentation ([Annex 5](#)). COM services informed members of the EXPP about a draft evaluation of the late payment directive, which is scheduled for adoption by the Commission soon and which is available at <http://bookshop.europa.eu/en/ex-post-evaluation-of-late-payment-directive-pbET0415875/>. Attention was also drawn to two interesting judgments concerning the interpretation of the Late payment Directive, Cases C-555/14 IOS Finance vs Servicio Murciano de Salud and C-256/15 Nemec. AT pointed to the need for guidance on certain key notions (e.g. "complex contracts"), in particular as used in Art. 4 of the Directive.

8. Main outcomes from the conference on award criteria in Public procurement organised by the Commission in Tallinn on 19 May 2016 (GROW G1)

COM services briefly presented the policy perspective and objectives of the conference, and then gave a few highlights of the event:

- There is a big variety of use of award criteria in MS, as indicated in the Single Market Scoreboard : in some MS the lowest price is the only criterion for more than 90% of all procurements, while in other MS, it is the only criterion for less than 10% of the procedures :
(http://ec.europa.eu/internal_market/scoreboard/performance_per_policy_are_a/public_procurement/index_en.htm)
- Commissioner Bieńkowska emphasised in her opening speech that Contracting Authorities need not only to comply with legislation, but also to achieve best value for money.

- The following recommendations were made :
 - The number of Contracting Authorities should be reduced to the minimum, and PP staff should be specialised.
 - Auditors, procurement officers and decision makers should share and compare their respective interpretations of the legislation, and also keep politicians aware.
 - Data on best practices should be compiled and shared.
 - Specific training modules should be designed for each kind of target audience. Not only buyers, but also bidders need to be trained, so that both sides can cooperate effectively.
 - There is a need for Contracting Authorities to attract good professionals from the private sector, although they are not immediately capable of handling public procurements, and need prior substantial training.
 - Public buyers should have a thorough knowledge of the market and supply chains.
 - Career incentives should be offered to staff in Contracting Authorities.
- As a follow up, a workshop on Public Procurement will be organised by the Dutch Presidency during the Single Market Forum Final Event on 13 June in Amsterdam.
- Replications of the conference on award criteria could be organised for small groups of Member States during the 2nd semester.

9. Information point on Reporting obligations under new Public Procurement Directives (GROW G4)

COM services reported on the ESWG (Economic-Statistic Working Group) meeting on the issue of the reporting obligations stemming out of the new directives. The discussion was put in the broader context of the data related policy actions of the Single Market Strategy. The main take away from the meeting were:

- MS agreed with the general goal of monitoring and using data to improve governance. However, they brought up several issues with the template. First of all, it was too extensive to be followed as a whole, beyond both the legal obligations stemming from the directives and often beyond the knowledge of MS. Second, some sections were not specific enough.
- COM services explained that the general approach is to have an extensive and ambitious template, which is agreed with the MS and which represents the “goal of monitoring” for the coming years. However, this also means that not all the relevant information will be available already for the first report(s) – which is acceptable. The first report April 2017 will be used as a stock taking exercise for mapping existing data. The template and the report are a part of a progressive, cooperative learning process and the monitoring should always primarily be useful for Member States, with the role of COM services to facilitate the process and add value by sharing practices across MS.

- As next steps, it was agreed that for the third week of June further comments would be requested from the MS. Besides open comments, MS were asked to provide a comment to each section of the template from the following options: (1) “relevant & already collected”, (2) “relevant & we would like to collect in the future”, (3) “irrelevant / monitoring costs will always be higher than benefits” or (4) “it’s a combination, we will explain in more detail”). COM services will prepare another version of the template based on the comments received for a new discussion in the ESWG.

10. Information point concerning the draft "Commission Implementing Decision on the detailed rules for the application of Articles 34 and 35 of Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors" – state of play (Please note that this is not a formal comitology consultation) (GROW G3)

COM services inform about the draft Commission Implementing Decision on the detailed rules for the application of Articles 34 and 35 of Directive 2014/25/EU. This is not a formal comitology consultation.

The currently applicable rules for the practical handling of requests for exemptions under the Utilities Directive are set out in Decision 2005/15/EC, including in particular the information to be included in such requests (Annex I of the Decision)

The 2005 Decision will be replaced by a completely new decision, to be adopted by comitology (advisory procedure), on the detailed rules for the application of Art. 34 and 35. The basic substance is not changed of the 2005 Decision; the new decision can thus be seen as an update based on the changed provisions/terminology of Directive 2014/25/EU and drawing on the practical lessons learnt since 2005.

Procedural aspects: By 20 June all translations are expected. Formal written consultation of the Advisory Committee on Public Procurement under the advisory procedure on the draft implementing measures will be launched around 1 July 2016. Deadline will be taking into consideration summer holidays period.

Content of the draft measures: COM services gave a short description of the content (updated provisions on use of electronic means of communication, extension of transparency obligations for Commission to ensure publication of a (standardised) notice at all stages of procedures concerning requests for exemption and setting out the information to be provided. Concerning the latter, the comparison with Annex I of the 2005 Decision shows that the information required is substantially the same with the small changes either linked to updates of relevant competition law acts or drawing on the practical experience since 2005.

COM services informed of the judgment in Case T-463/14. On a question by IT it was confirmed that requests for exemption do not have to be accompanied by a position adopted by a regulator; however, if not, then deadlines are prolonged and the national authorities will anyway have to take position on the request.

The Chairman confirms that documents will be sent end of June or beginning July.

11. Information point on eForms, the future development of the standard forms (GROW G4)

COM services briefly present their plans concerning the next generation of the procurement standard forms ("eForms"). COM services explain that they are starting to work on the forms because they can be made simpler as well as more useful for all stakeholders. Furthermore, there also seems to be political interest by MS, as indicated for instance by the commitments made by UK, FR, IT and other MS at the recent Anti-Corruption Summit to implement the [Open Contracting Data Standard](#), an international standard similar to the standard forms.

Afterwards, COM services explain that to ensure best quality of eForms, they will concentrate on the possibilities given by information technology and the needs of all users. Furthermore, the creation process will be inclusive and collaborative, including several rounds of consultations. COM services point out that such an approach requires time, which is the reason for starting already now, soon after the adoption of the latest version of the forms, so that everything goes according to plan. COM services describe the next steps: a document explaining the functioning of the forms, problems, and possible solutions as well as a technical annex will be prepared and sent for a targeted consultation to MS as well as other stakeholders (e.g. business and municipality associations) over summer. After incorporating the comments, the COM services will present the progress made at the next meeting of the EXPP. COM services kindly request the MS to participate already in the targeted consultation and share the consultation amongst their stakeholders.

UK supports the action and appreciates the proposed inclusive process, in particular in relation to its eSender group. DE supports the action and stresses the need to monitor policy relevant indicators such as strategic procurement.

12. AOB

On 8 March 2016, a presentation about the health sector was held. In follow up to this presentation, on 19th September 2016, a meeting will be organised with contracting authorities – MS will receive the agenda.

The next meeting is scheduled for 7th of November 2016.
