

**UNICE Conference**

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**“Public Procurement: A Dynamic  
Contribution to Europe’s Internal Market”**

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Ladies and gentlemen

It is a pleasure to be with you this morning and to contribute to this prestigious UNICE conference on Public Procurement. You must have done something right, if you attract so many eminent personalities from all over Europe and bring together representatives of buyers and suppliers as well as many other stakeholders.

As Director General for the European Internal Market, I am in charge of monitoring and developing the Community policy in the field of Public Procurement in order to open up the markets.

So I should first like to discuss the role of Public Procurement within the Internal Market, and its economic importance. I will then give a brief outline of the main elements of the recently adopted reform of EU Public Procurement legislation, the so-called "Legislative Package". And finally, I will mention some currently ongoing initiatives in order to give you an idea of our long term strategy. I am aware that many of these issues will be discussed at greater length in the course of this conference so I will not deal in detail with such issues now, but try to give you the overall picture.

## **1. GENERAL INTRODUCTION**

### **1.1. Public Procurement at the heart of the internal market**

The principles of free movement of goods and services and the freedom of establishment are the cornerstones of the Internal Market. Within the Internal Market there should be no barriers to trade between Member States. Building on this foundation the European Union has developed a legal framework which should both enable and ensure that goods and services can indeed circulate and be provided freely within the Member States.

The Public Procurement rules pursue this same objective within the specific context of the purchases carried out by the public sector. In fact, purchases of goods, services and public works by governments and public authorities are an important factor of cross-border competition in Europe. A well-functioning Internal Market therefore requires that all potential suppliers are treated equally by public

purchasers in all Member States. What to buy, and whom to buy it from, are decisions which need to be made on the basis of best value for money, not as a thinly disguised instrument to subsidise national industry or to favour certain economic actors.

## **1.2. Economic Importance**

As you know, it was in Lisbon that the head of States fixed an ambitious objective for Europe's future: to ensure that the European economy would become the world's most competitive economy by 2010. Because of its importance in the overall context of the EU economy, improvements in Public Procurement could contribute significantly to this objective. In 2002 Public Procurement amounted to approximately €1500 billion – more than 16% of GDP or, in other words, equivalent to more than half of German GDP. In the enlarged Europe, and with the rapid development of infrastructure that is foreseen in the new Member States, the importance of public procurement is not going to decrease!

A recent report produced by my Directorate General<sup>1</sup>, shows how the European Directives have contributed to increased transparency in public procurement markets. New evidence, from surveys based on a sample of firms and public authorities, suggests that increased transparency has effectively resulted in more cross-border competition, price convergence and lower prices for goods and services purchased by public authorities.

The new evidence also suggests that the prices paid by public authorities when the public procurement directives are applied are lower. Although the difference in prices for the same products remains quite large across the EU, the application of procurement rules appears to reduce prices by around 30%.

Case studies of "typical" public procurement goods also show that in general, the directives helped to increase intra EU competition. Import and export prices of these goods have converged over time. For instance, in the case of small iron and steel rails export price

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<sup>1</sup> *“Report on the functioning of public procurement markets in the EU: benefits from the application of EU directives and challenges for the future”*. The full text of the report is accessible at: [http://europa.eu.int/comm/internal\\_market/publicprocurement/docs/public-proc-market-final-report\\_en.pdf](http://europa.eu.int/comm/internal_market/publicprocurement/docs/public-proc-market-final-report_en.pdf)

dispersion dropped from around 21% in 1988-92 to 7% in 1998-2002.

To put this into perspective, if the performance of EU public procurement markets could be improved, by increasing competition and reducing the overall public expenditure on goods and services by 10%, no Member State's budget deficit would exceed 3% of GDP. In the light of the evidence in the report this seems an entirely plausible objective.

### **1.3. Why legislate?**

Why efficient Public Procurement rules are of particular interest today? Two reasons: 1) poor public budgets; 2) much stricter State aids disciplines increase temptation to abuse Public Procurement transactions if public authorities want to unduly favour a specific company.

I said earlier that the principles of free movement of goods and services apply to Public Procurement as much as to any other part of the internal market. If that is so: Why did we introduce specific legislation in this area? Why did we not avoid what is sometimes perceived as “red tape”? Why not simply rely directly on the Treaty provisions and the principles derived from them by the case law of the European courts? When the European Union was still known as the European Community this was indeed the situation. However, experience soon showed that the Treaty alone wasn't sufficient, that it led to unacceptable legal uncertainty for all parties concerned and therefore could not ensure an acceptable degree of compliance.

To give you just an example: it is easy to infer from the Treaty that there must not be any direct or indirect discrimination against non-national companies. But the Treaty does not provide, for example, an explicit obligation to publish tenders at a European level!

Without secondary legislation, the advantage of a single set of rules, of a single place to find public procurement opportunities throughout the Union, and thus the full benefits of the internal market would be lost.

## 2. THE LEGISLATIVE PACKAGE

### 2.1. Overall objectives

The first Directives on Public Procurement were adopted 1971, they have been progressively completed through additions and modifications. By the second half of the 1990s it became increasingly clear that there was a need to review the Public Procurement Directives entirely. There were several reasons leading to this conclusion: the Directives assumed that all procurement was conducted with traditional paper based procedures; the texts were in need of a major simplification and clarification effort; and there was a lack of flexibility needed to reflect the general modernisation of public administration.

After almost four years of intensive work in both the European Parliament and Council, the most important reform of EU public procurement law since the establishment of the Internal Market was finally adopted on 31 March 2004 in the shape of two Directives: n. 2004/17/EC for the Utilities Sector and n. 2004/18/EC for the “Classic” or “Public” Sector.

When the initial proposal was launched, in May 2000, the stated aim was to achieve a reform – not a revolution – of the Public Procurement regime. The Commission intended to meet three objectives: to **modernise, to simplify and to render the rules more flexible**. These objectives have, I believe, been met: today the new Directives offer both a series of new features while preserving a remarkable degree of stability.

### 2.2. Modernisation, simplification and flexibility

The most outstanding example of **modernisation** is of course the introduction of new purchasing methods such as framework agreements, electronic auctions and dynamic purchasing systems. I welcome the fact that there is to be a separate workshop dedicated to these developments.

**Striking Simplification:** The new Public Sector Directive replaces 4 earlier Directives, reducing the number of Articles from 117 to just 84. Furthermore both of the new Directives have been structured so

that their provisions follow the logical sequence of an award procedure. This will make it easier to “navigate” the texts.

The Directives were adopted by co-decision procedure, after a long and difficult conciliation between our Member States in Council and the European Parliament. Inevitably, they therefore represent a series of compromises. We have nevertheless tried to clarify a great many provisions existing in the previous Directives and to formulate the new provisions as clearly as possible.

For example, we have tried very hard to render as clear as possible the social and environmental issues. In general, it seems fair to say that clarifications contained in the new Directives do not introduce new possibilities compared to what was possible under the previous Directives *when correctly interpreted*. However, the legislative package introduces important measures to prevent incorrect interpretation of these provisions. The new Directives, in this respect, embody the case law of the European Court. It was in fact not rare for certain purchasers to read particularly sensitive judgments in ways the judges might not have imagined ...

The final objective of the legislative package was the introduction of additional **flexibility** – while ensuring that the basic principles of equal treatment and transparency were respected. Here there are three main innovations. First of all, the use of electronic means of communication and E-procurement, which can reduce cost and increase competition. To give just one example: making documentation available over the internet saves the time and cost of sending it by post. Not only can the documentation for a major procurement often be measured in kilograms, but it may also take a week to arrive!

More flexibility is also provided by the competitive dialogue, a new procedure suitable for purchasers who have not yet finally determined all the features of a particularly complex contract. It's a brand new tool which will be discussed in a separate workshop.

And finally, the new possibility to define technical specifications in terms of performance and/or functionality will provide even more flexibility. This approach should open up scope for innovation which could be particularly interesting for SMEs.

Speaking of SMEs I would like to mention another Commission study. It shows that up to 78% of the successful firms being awarded a contract (the value of which is above the thresholds) are SMEs<sup>2</sup>. This is encouraging as the access of SMEs to public procurement can be seen as an important indicator of the openness of public procurement. It also seems to clearly indicate that SMEs are able to compete without the need for “crutches” in the form of special provisions or protection. And that is why, after all the debates, there are no specific provisions for SMEs in the new Directives.

All in all, I trust that the new Directives will prove to be a good investment, which will produce dividends for everybody involved in the Internal Market, for purchasers, for potential suppliers and, last but not least, for the European Taxpayer.

Now, it is up to Member States to play their role. They have until January 2006 to implement the new legislation. The Commission is ready to assist them with this task, in order to make the reform successful.

### **3. OTHER INITIATIVES – WHAT’S NEW**

You know the old saying: no rest for the wicked! So let’s look at what else we are currently working on.

#### **3.1. Defence Procurement**

Let me first mention a very recent Commission initiative in an extremely sensitive area: last week, the Commission adopted a Green Paper on Defence Procurement. The purpose of this consultative document is to launch a debate on boosting cross-border competition in certain types of defence procurement, in a way consistent with the special nature of the sector. The Commission wants to help Member States – who welcome this debate – to get better value in the €30 billion plus EU market for defence procurement and to create a more competitive EU industrial base.

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<sup>2</sup> Study “*The access of SMEs to public procurement contracts*” (2004); full text accessible at: <http://europa.eu.int/comm/enterprise/entrepreneurship/craft/craft-studies/documents/public-procurement-summary.pdf>

The Green Paper assesses how the Commission might clarify, in a Communication, in which cases defence procurement can be exempted, on national security grounds covered in Article 296 of the EC Treaty, from general Treaty requirements on the free movement of goods and services and from the existing public procurement Directives.

The Green Paper also asks the stakeholders if the Commission should propose a Directive coordinating procedures for defence procurement, in cases where the exemption is not applicable or a Member State chooses not to make use of it. For such contracts, the Directive would introduce new, flexible, rules in line with the special nature of the sector and ensuring transparency and non-discrimination.

The debate is strictly focused on intra-community competition and will not interfere with the current regime for extra-EU or international trade. I would encourage all of you to contribute actively to this debate, if you wish to have an influence on the outcome. Contributions are welcome, before end of January 2005.

### **3.2. Public Private Partnerships**

Another current concern is the issue of Public Private Partnerships. This is a highly complex issue that covers many diverse phenomena, including public contracts and concessions. In the workshop, I am sure the topic will get the in-depth reflection which it merits. This will be an essential part of the reflection process which was initiated by the Commission's Green Paper on PPPs. You can be sure that all the comments received, will be carefully examined and considered.

### **3.3. Remedies**

Let me finally mention another issue: remedies. In order to function properly the Internal Market must allow companies to take effective steps to enforce their rights under the Public Procurement Directives. Whether the current remedies available are adequate or whether they too need to be reformed is something we are still considering. Here again, the debate is open.

#### 4. CONCLUSION

Ladies and gentlemen, let me conclude, Public Procurement is an important horizontal tool to make the Internal Market function – not least because of its economic importance and its potential to contribute to the Lisbon objectives, to ensure business opportunities and to save taxpayers' money. The Commission will certainly continue its work in order to open up the Public Procurement markets. However, one has to be aware that to be successful it needs the pro-active participation of all the actors in the process, in the first place of our Member States, but also of all the stakeholders. We are counting on your commitment and your collaboration.

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